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or mainprise, till the said forfeiture shall be paid. 43 El. c. 2. s. 2, 11.

2. And by the 17 G. 2. c. 38. *Any parish officers neglecting to obey any directions of that act, being convicted thereof on oath before two justices, in two kalendar months after the offence committed, shall forfeit not exceeding* 5 l. *nor less than* 40 s. *to the poor, by distress.* s. 14.

3. And *in all actions to be brought in the courts at* Westminster, *or at the assizes, for the recovery of any sum mispent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted.* 3 W. c. 11. s. 12.

VIII. Indemnity of overseers in the performance of their duty.

1. By the 7 *J.* c. 5. and 21 *J.* c. 12. *If any action be brought against any overseer, or other person which in his aid, or by his commandment, shall do any thing concerning his office, he may plead the general issue, and if he recovers, he shall have double costs: And such action shall be laid in the proper county, and not elsewhere.*

2. And by the 43 *El.* c. 2. *Persons sued for any thing done on that act, may plead the general issue, and have treble damages with costs, and that to be assessed by the same jury or writ to inquire of the damages.* s. 19.

Pope. See Popery.

Popery.

104842

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I. General obſervations.

1. IT is to be obſerved in general, that *popiſh* recuſants are liable to all the forfeitures and diſabilities, and other inconveniences, to which other recuſants are liable; and to many others, to which other recuſants are not liable.

For to be a *recuſant*, doth not neceſſarily imply the being a *papiſt*: But a *recuſant* is any perſon who refuſes to go to church, and worſhip god, after the manner of the church of *England*: A *popiſh recuſant*, is a papiſt who ſo refuſeth: And a *popiſh recuſant convict*, is a papiſt legally convicted thereof. For the want of attending to which diſtinction, divers authors who have treated of this ſubject, have fallen into confuſion.

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2. There are ſeveral ſtatutes made againſt recuſants in Q. *Elizabeth*'s reign, and the former part of the reign of K. *James* the firſt, which are not reſtrained to popiſh recuſants only; but as there were few or no other recuſants but papiſts at that time, they have regard chiefly to perſons of that profeſſion: and therefore they are inſerted under this title: altho' the words of them do extend, and the act of toleration ſuppoſes them to extend, to all non-conformiſts in general. But the force of them as to proteſtant diſſenters is taken away by that act. But no papiſt, or popiſh recuſant, ſhall have any benefit by the act of toleration.

3. The reader will obſerve from the dates of the ſeveral acts, how the penalties have from time to time been inforced and inlarged, upon every freſh attempt againſt the government; eſpecially at the ſeveral periods during Q. *Elizabeth*'s reign, after the powder plot in the reign of K. *James* the firſt, and after the rebellion in 1715. One of the acts particularly, immediately after the powder plot, which will often occur in the following ſections, is, in the ſtatutes at large, a well penned act. It is much in the ſtyle of Lord *Coke*; ſtrong, and clear: where tho' many words are uſed, yet none of them can be wanted. And probably it was drawn up by him. It brings the ſeveral laws together, which had been enacted on the ſubjects it treats of; and renders them all uſeleſs and dead, as much as if it had repealed them in expreſs words. And it may be a pattern in reducing into one general law, the ſeveral ſtatutes which on many heads are now become very numerous, and not a little confuſed.

4. In peruſing this whole title, wherein the laws againſt papiſts are brought clearly together in one view, it will occur poſſibly to remark, that they are many, and perhaps ſevere. But it ought to be conſidered withal, how proteſtants are treated in popiſh countries; and that the offences intended to be guarded againſt by theſe laws, are not the ſtealing of an ox, or the burning of an houſe, or any other invaſion of private property, but dethroning the prince, and overturning the government.

'Tis true, theſe laws in the preſent age have been permitted to ſleep in a great meaſure, and that even at a time when a rebellion was advancing, and a foreign invaſion attempted, in favour of a popiſh prince and government: but they are ſuffered nevertheleſs to continue in force; perhaps that it may appear to the enemies of our conſtitution, that if they are ſpared, it is not for want of power, but of inclination to puniſh.

II. Popiſh ſupremacy oppoſed and aboliſhed.

1. Whoever ſhall affirm, that the king hath not the ſupreme authority in cauſes eccleſiaſtical, ſhall be excommunicated *ipſo facto*, and not reſtored but by the archbiſhop on his repentance. *Can.* 2.

2. By the ſtatute of the 27 *Ed.* 3. *ſt.* 1. *c.* 1. which is called the ſtatute of proviſors; perſons ſuing in a foreign realm, or impeaching judgment given in the king's court, ſhall incur a *præmunire*; that is, ſhall have a day given to appear in perſon to

anſwer to the contempt, and if they come not, they ſhall be out of the king's protection, their lands and goods ſhall be forfeited, and their bodies impriſoned, and ranſomed at the king's will.

And if any bring into the realm a ſummons or excommunication againſt any one executing the ſtatute of proviſors, he ſhall ſuffer pain of life and member. 13 *R.* 2. *ſt.* 2. *c.* 3.

3. And by the 5 *El.* *c.* 1. If any perſon ſhall maintain the authority of the ſee of *Rome* in this realm, he ſhall incur a *præmunire* for the firſt offence, and for the ſecond ſhall be guilty of high treaſon. Proſecution to be within a year. And the juſtices in ſeſſions may enquire thereof, and ſhall certify the ſame into the king's bench. *ſ.* 2, 3, 4, 10, 11.

4. And if any perſon ſhall put in practice to abſolve or withdraw any ſubjects from their allegiance, or if any perſon ſhall be willingly ſo abſolved or withdrawn; he, his aiders and maintainers ſhall be guilty of high treaſon. The trial to be at the aſſizes, or in the king's bench. 3 *J.* *c.* 4. *ſ.* 22, 23, 25.

III. Concerning the pope's preſentation to benefices.

1. No perſon by authority from the court of *Rome*, ſhall diſturb any perſon of holy church, preſented or collated by the king or his ſubjects; on pain of fine and impriſonment. 25 *Ed.* 3. *ſt.* 6.

2. None ſhall take any benefice of an alien, or convey money to him for the farm thereof; on pain of incurring a *præmunire.* 3 *R.* 2. *c.* 3.

3. No alien ſhall purchaſe or occupy a benefice in *England*; on pain of a *præmunire.* 7 *R.* 2. *c.* 12.

4. He that ſhall go out of the realm, to procure a benefice, ſhall be out of the king's protection; and the ſame ſhall be void. 12 *R.* 2. *c.* 15.

5. If any perſon ſhall accept a benefice from the pope, he ſhall be baniſhed for ever, and his lands and goods forfeited. 13 *R.* 2. *ſt.* 2. *c.* 2.

6. No proviſion of a benefice not vacant, made by the pope, and licenſed by the king, ſhall be available; but perſons endeavouring to exclude the incumbent thereby, ſhall incur a *præmunire.* 7 *H.* 4. *c.* 8. 3 *H.* 5. *ſt.* 2. *c.* 4.

IV. Bringing bulls and other inſtruments from Rome.

1. By the ſtatute of the 16 *R.* 2. *c.* 5. (which is the famous ſtatute called the ſtatute of *præmunire)* If any perſon ſhall purchaſe, or bring into the realm, any bulls or inſtruments from *Rome*, or elſewhere, they ſhall incur a *præmunire*; that is to ſay, they ſhall be put out of the king's protection; and their lands and goods ſhall be forfeit to the king; and they ſhall be attached by their bodies, if they may be found, and brought before the king and his council, there to anſwer; or elſe proceſs ſhall be awarded againſt them by *præmunire facias* (ſo called from thoſe words in the writ).

2. But by a ſubſequent ſtatute, if any perſon ſhall get or publiſh any bull or inſtrument from *Rome*, he ſhall be guilty of high treaſon. And his aiders and comforters ſhall incur a *præmunire*. And concealing the ſame ſhall be miſpriſion of high treaſon. 13 *El. c.* 2. *ſ.* 3, 4, 5. And the juſtices of the peace may enquire thereof, within a year and day. 23 *El. c.* 1. *ſ.* 8.

V. Popiſh books and relicks.

1. If any perſon ſhall *have in his cuſtody* any books called antiphoners, miſſals, grailes, proceſſionals, manuals, legends, pies, portuaſſes, primers in *latin* and *engliſh* (except thoſe ſet out by *K. H.* 8.) couchers, journals, ordinals or other books for the ſervice of the church, not ſet forth by the king; he ſhall forfeit for the firſt offence 40 *s.* for the ſecond 4 *l.* and for the third ſhall be impriſoned at the king's will. And the juſtices of the peace in their general ſeſſions may hear and determine the ſame. 3 & 4 *Ed.* 6. *c.* 10.

2. No perſon ſhall *bring from beyond the ſeas*, nor ſhall *print*, *ſell*, or *buy* any popiſh primers, ladies pſalters, manuals, roſaries, popiſh chatechiſms, miſſals, breviaries, portals, legends, and lives of ſaints, containing ſuperſtitious matter, printed or written in any language whatſoever; nor any other ſuperſtitious book printed or written in *engliſh*; on pain of 40 *s.* one third to the king, one third to him who ſhall ſue in any court of record, and one third to the poor of the pariſh where ſuch books ſhall be found; and the books to be burned. 3 *J. c.* 5. *ſ.* 25.

3. If any perſon ſhall *bring into the realm* any agnus dei, croſſes, pictures, beads, or ſuch like vain and ſuperſtitious things, from the biſhop of *Rome*, or any authorized by him to conſecrate the ſame, and offer them to any perſon to be worn or uſed; both the bringer and receiver ſhall incur a *præmunire:* But if the receiver ſhall in one day's time deliver the ſame to a juſtice of the peace, or if ſuch perſon to whom the ſame is offered ſhall carry the bringer before the next juſtice, or (if he cannot) ſhall diſcloſe the offender's name and place of abode or reſort, to the biſhop, or to a juſtice of the peace, he ſhall not incur ſuch *præmunire*. And in ſuch caſe, the juſtice in 14 days ſhall ſignify the ſame to one of the privy council, on pain of incurring a *præmunire*. 13 *El. c.* 2. *ſ.* 7, 8, 10.

4. And two juſtices of the peace (and mayors and other chief officers in corporations) may *ſearch* the houſes and lodgings of every popiſh recuſant convict, or of every perſon whoſe wife is a popiſh recuſant convict, for popiſh books and relicks of popery: and if any altar, pix, beads, pictures, or ſuch like popiſh relicks, or any popiſh book, ſhall be found in their cuſtody, as in the opinion of the ſaid juſtices, mayor, or other chief officer, ſhall be thought unmeet for ſuch recuſant to have or uſe, the ſame ſhall be preſently defaced and burnt, if it be meet to be burned; and if it be a crucifix, or other relick of any price, the ſame to be defaced at the ſeſſions, and returned to the owner. 3 *J. c.* 5. *ſ.* 26.

VI. Foreign education of papiſts.

1. If any perſon ſhall contribute, or ſend over ſea, any money or other relief to any ſeminary abroad; he ſhall incur a *præmunire*. 27 *El. c.* 2. *ſ.* 6.

2. They who be in ſeminaries abroad, ſhall return in ſix months after proclamation, and conform in two days, before the biſhop, or two juſtices of the peace; otherwiſe, if they return at all, without ſubmiſſion, they ſhall be guilty of high treaſon. 27 *El. c.* 2. *ſ.* 5.

3. If any perſon ſhall go, or ſend any perſon, beyond the ſeas, to be popiſhly educated, who ſhall be there ſo inſtructed, or ſhall ſend any money or other thing for that purpoſe; he ſhall, on conviction before the judges of the king's bench, or of aſſize, be diſabled to be plaintiff in any action, or to be committee of any ward, or executor, or adminiſtrator, or capable of any legacy or deed of gift, or to bear any office; and ſhall forfeit his goods, and ſhall forfeit his lands during life. But if he ſhall conform in 6 months after his return, he ſhall be diſcharged. 3 *C. c.* 2. 1 *J. c.* 4. *ſ.* 6, 7.

4. Children, not being ſoldiers, mariners, merchants, or their apprentices or factors, departing the realm, on account of education, or otherwiſe, without licence from the king, or ſix of the privy council, ſhall take no benefit by any gift, conveyance, deſcent, deviſe, or otherwiſe, of any lands or goods, until they conform. 3 *J. c.* 5. *ſ.* 16. And perſons ſending any ſuch child over ſeas, without licence, ſhall forfeit 100*l.* to him who ſhall ſue in any court of record. 3 *J. c.* 5. *ſ.* 16. 11 & 12 *W. c.* 4. *ſ.* 6.

5. No woman, or child under 21, except ſailors or factors, ſhall paſs over ſea without licence of the king and council; on pain that the officer of the port ſhall forfeit his office and his goods, the owner of the ſhip his veſſel, and the maſter his goods and be impriſoned 12 months. 1 *J. c.* 4. *ſ.* 8.

6. No perſon, not bred up by his parents in the popiſh religion, ſhall breed up or ſuffer his children to be bred up in the popiſh religion; on pain of being diſabled to bear any office, and of ſuch children alſo being diſabled to bear any office until they conform. 25 *C.* 2. *c.* 2. *ſ.* 8.

VII. Penalty of perverting others, or being perverted to popery.

If any perſon ſhall put in practice to reconcile any ſubjects to popery, or if any perſon ſhall be willingly ſo reconciled; he, his aiders and maintainers, ſhall be guilty of high treaſon. The trial to be at the aſſizes, or in the king's bench. 3 *J. c.* 4. *ſ.* 22, 23, 25.

VIII. Jesuits and popish priests.

1. No jesuit or popish priest shall come into or be in the realm, on pain of high treason; unless he conform. 27 *El. c.* 2. *s.* 2, 3, 10.

2. And if any person shall knowingly receive or relieve any such, he shall be guilty of felony without benefit of clergy. 27 *El. c.* 2. *s.* 4.

3. And if any person, knowing such jesuit or priest to be in the realm, shall not in 12 days discover the same to a justice of the peace or other higher officer, he shall be fined and imprisoned at the king's pleasure. And if such justice or other officer shall not in 28 days give information thereof to one of the privy council, he shall forfeit 200 marks. 27 *El. c.* 2. *s.* 13.

4. And a suspected jesuit or popish priest, being lawfully examined, and refusing to answer whether he be a jesuit or popish priest, shall be imprisoned till he make direct and true answer. 35 *El. c.* 2. *s.* 11.

5. And the person who shall first discover, to any justice of the peace, any person who shall entertain or relieve any jesuit, seminary, or popish priest, within 3 days after the offence; so that by reason of such discovery any offender shall be taken and convicted; such person shall not only be freed from any penalty for such offence, if himself be an offender therein, but shall also have the third part of the forfeitures if they do not exceed 150 *l.* and if they do exceed 150 *l.* then he shall have 50 *l.* 3 *J. c.* 5. *s.* 1.

6. If any person shall apprehend any popish bishop, priest, or jesuit, and prosecute him till he be convicted of exercising any part of the office or function of a popish bishop, or priest, he shall receive from the sheriff 100 *l.* reward. 11 & 12 *W. c.* 4. *s.* 1, 2.

7. If any popish bishop, priest, or jesuit, shall exercise any part of the office or function of a popish bishop or priest (except in foreign ministers houses), he shall be adjudged to perpetual imprisonment. 11 & 12 *W. c.* 4. *s.* 3, 5.

8. If any person shall contribute, or send over sea, any money or other relief to any jesuit or popish priest; he shall incur a *præmunire*. 27 *El. c.* 2. *s.* 6.

IX. Saying and hearing mass.

1. If *any person* shall *say or sing mass*, he shall forfeit 200 marks, and be imprisoned for a year, and till paid;

And if any person shall wilfully *hear* mass, he shall forfeit 100 marks, and be imprisoned for a year;

The forfeitures to be one third to the king, one third to the poor, and one third to him who shall sue in any court of record. And if not paid in 3 months after judgment, he shall be committed till he pays, or conforms. And the sessions may determine the same. 23 *El. c.* 1. *s.* 4, 9, 10, 11.

2. If

2. If any popiſh *biſhop, prieſt, or jeſuit* ſhall ſay maſs, except in foreign miniſters houſes, he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3, 5.

3. And the perſon who ſhall firſt diſcover to any juſtice of the peace any maſs to have been ſaid, and the perſons that were preſent thereat, and the prieſt that ſaid the ſame, or any of them, within 3 days after the offence, and by reaſon of ſuch diſcovery any offender is taken and convicted; ſuch perſon ſhall not only be freed from any penalty for ſuch offence, if himſelf be an offender therein, but ſhall alſo have the third part of the forfeitures, if they do not exceed 150 *l.* and if they do exceed 150 *l.* then he ſhall have 50 *l.* and after conviction of the offender, he ſhall have a certificate from the judges, or juſtices of the peace before whom the conviction ſhall be, directed to the ſheriff or perſon who ſhall ſeize the goods, or levy the forfeiture, commanding him to pay the ſame. 3 *J. c.* 5. *ſ.* 1.

4. And conveyances made by recuſants to evade the penalties for ſaying or hearing maſs, ſhall be void. 29 *El. c.* 6. *ſ.* 1.

X. Penalties of 12 d. *a* Sunday, *and* 20 l. *a month, for not going to church.*

1. All perſons, having no lawful or reaſonable excuſe to be abſent, ſhall reſort to their pariſh church or chapel, or upon reaſonable let thereof, to ſome uſual place where divine ſervice ſhall be performed, according to the liturgy and practice of the church of *England*, upon every *Sunday* and holiday; on pain of puniſhment by the cenſures of the church, or of forfeiting to the poor for every offence 1 *s.* to be levied by the churchwardens by way of diſtreſs. 1 *El. c.* 2. *ſ.* 14, 24. Except diſſenters qualified by the act of toleration, who reſort to ſome congregation of religious worſhip allowed by that act. 1 *W. c.* 18. *ſ.* 2, 16.

And he who is abſent from his own pariſh church, ſhall be put to prove where he went to church. 1 *Haw.* 13.

And one juſtice, on proof (in one month after default) by confeſſion, or oath of witneſs, may call the party before him; and if he ſhall not make ſufficient excuſe, and due proof thereof, to the ſatisfaction of the juſtice, ſuch juſtice ſhall give warrant to the churchwarden to levy 12 *d.* to the uſe of the poor of the pariſh, for every default, by diſtreſs and ſale, rendring the overplus. For want of diſtreſs, commitment till paid. 3 *J. c.* 4. *ſ.* 27, 28.

2. Every perſon above the age of 16 years, who ſhall not repair to ſome church, chapel, or uſual place of common prayer, being convicted thereof before the judges of aſſize, or juſtices of the peace in their open quarter ſeſſions, ſhall forfeit 20 *l.* a month, one third to the king, one third to the maintenance of the poor of the pariſh, and of the houſes of correction and of impotent and maimed ſoldiers, as the lord treaſurer, chancellor, and chief baron of the exchequer ſhall order, and one third to him who ſhall ſue in any court of record. If not paid in 3 months after judgment, he ſhall be impriſoned till he pay, or conform himſelf to go to church. 23 *El. c.* 1. *ſ.* 5, 11. 29 *El. c.* 6. *ſ.* 7.

Note;

Note; These two last statutes, by inflicting 20 *l.* for a month's absence, dispense not with the forfeiture of 12 *d.* on the former statutes for the absence of one *Sunday*; for both may well stand together; and the 12 *d.* is immediately forfeited upon the absence of each particular day. 1 *Haw.* 13.

3. And every offender in not repairing to church, being once convicted, shall pay into the exchequer at *Easter* or *Michaelmas* term which shall first happen after the conviction, 20 *l.* for every month contained in the indictment; and shall also afterwards, without any other indictment or conviction, pay into the exchequer at every *Easter* and *Michaelmas* term 20 *l.* for every month till he conform; except where the king may refuse the same, and take two parts of the lands as hereafter is mentioned. 3 *J.* *c.* 4. *s.* 8.

4. And every conviction recorded, shall by the court be certified into the exchequer, and if default shall be made in any part of payment, the king may by process take the goods, and two parts of the lands of the offenders. 3 *J.* *c.* 4. *s.* 9.

5. Also the king may refuse the penalty of 20 *l.* a month for not coming to church, and in lieu thereof may seize two parts of the offender's lands, and keep them till he conform. 3 *J.* *c.* 4. *s.* 10, 11.

6. And where seizure shall be made of two parts of the lands, for the penalty of 20 *l.* a month, such two parts shall, according to the extent thereof, go towards payment, but the third part shall not be extended or seized. And when the recusant shall die, and the said penalty not paid, the king shall keep the two parts, until the whole be thereby, or otherwise, paid. 1 *J.* *c.* 4. *s.* 5.

7. And if such recusant have not lands of 20 marks a year, or goods worth above 40 *l.* and shall not conform in 3 months, being thereto required by the bishop, or a justice of the peace, or the minister, he shall abjure the realm before two justices of the peace or the coroner; who shall enter the same of record, and certify the same at the next assizes. 35 *El.* *c.* 2. *s.* 8, 9.

And if he shall refuse to abjure, or not depart, or return, he shall be guilty of felony without benefit of clergy. 35 *El.* *c.* 2. *s.* 10.

But married women shall not be obliged to abjure, but they shall be subject to all the other penalties. 35 *El.* *c.* 2. *s.* 19.

8. And every person who shall retain in his service, or shall relieve, keep, or harbour in his house any servant, sojourner, or stranger, who shall not repair to church, but shall forbear for a month together, not having reasonable excuse, shall forfeit 10 *l.* for every month he shall continue in his house such person so forbearing. And the sessions may hear and determine the same. 3 *J.* *c.* 4. *s.* 32, 33, 36.

9. And conveyances made by recusants to evade the penalties for not coming to church, shall be void. 29 *El.* *c.* 6. *s.* 1.

10. And the justices in sessions shall have power to enquire, hear, and determine of all recusants and offences for not repairing to church; and shall have power at the sessions where an indictment is taken for such offence, to make proclamation, by which

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it ſhall be commanded that the body of the offender ſhall be rendred to the ſheriff, bailiff, or gaoler, before the next ſeſſions: And if he ſhall not appear of record at the next ſeſſions, then upon ſuch default recorded, he ſhall ſtand convicted. 3 *J. c.* 4. *ſ.* 7.

11. And no indictment or other proceeding againſt recuſants ſhall be reverſed (unleſs they conform) for any want of form, nor by any thing but by direct traverſe to the point of not coming to church. 3 *J. c.* 4. *ſ.* 16.

12. But every perſon who ſhall uſually on *Sundays* have in his houſe divine ſervice as eſtabliſhed by law, and be thereat himſelf uſually preſent, and ſhall 4 times a year at leaſt go to the pariſh church or other common church or chapel, he ſhall not incur any penalty for not repairing to church. 23 *El. c.* 1. *ſ.* 12. And this alſo ſhall not extend to proteſtant diſſenters, who reſort to ſome place of religious worſhip allowed by the act of toleration. 1 *W. c.* 18.

13. And the churchwardens and conſtables ſhall (on pain of 20 *l.*) preſent at the quarter ſeſſions once a year, the monthly abſence from church of all recuſants, and the names and ages of their children above 9 years of age, and the names of their ſervants. And the preſentments ſhall be entred by the clerk of the peace without fee, on pain of 40 *s.* And if the party preſented ſhall be indicted and convicted, ſuch churchwarden or conſtable ſhall have a reward of 40 *s.* to be levied of the recuſant's goods by warrant of the juſtices in ſeſſions. 3 *J. c.* 4. *ſ.* 4, 5, 6.

XI. Regiſtring eſtates.

1. Every perſon being a popiſh recuſant, or papiſt, or educated in the popiſh religion, or whoſe parent or parents ſhall be a papiſt or papiſts, or who ſhall uſe or profeſs the popiſh religion, ſhall within 6 months after he ſhall be of the age of 21, take the oaths of the 1 *G. c.* 13. and make the declaration againſt popery of the 30 *C.* 2. in one of the courts at *Weſtminſter*, or the quarter ſeſſions; or in default thereof, ſhall within 6 months afterwards, and within 6 months after he ſhall come into the poſſeſſion of any lands, regiſter the ſame; where they lie; who is the poſſeſſor of them; what eſtate he hath in them; the yearly rent, if lett; if lett upon leaſe, who made it, what rent, what fine; the time when regiſtred; in a parchment book or roll to be kept by the clerk of the peace. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

2. And ſuch lands ſhall be regiſtred in the county, where the houſe thereupon ſtands. 3 *G. c.* 18. *ſ.* 3.

3. And his name ſhall be ſubſcribed to the regiſtry, in the preſence of two juſtices in open ſeſſions, by himſelf or his lawful attorney (the warrant of attorney to be proved by two witneſſes, and entred of record); and two juſtices ſhall ſubſcribe their names as witneſſes (on pain of 20 *l.*) that the entry was duly made. And the clerk of the peace ſhall, on application made ten days at leaſt before the ſeſſions, enter the ſame before ſuch ſeſſions; who ſhall have 3 *d.* for every 200 words of the regiſtry and entry of record, and for every copy thereof, and for any one comparing the ſame

with

with the originals; and 4 *d.* for every ſearch. And if he neglect or refuſe to do his duty herein, he ſhall forfeit his office. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

4. Perſons not qualifying, or not regiſtring, or not regiſtring truly, ſhall forfeit ſuch lands, or the value thereof, two thirds to the king, and one third to him who ſhall ſue for the ſame at the common law, or in chancery. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

5. But no action for any forfeiture for not regiſtring, or for regiſtring fraudulently, ſhall be brought after two years after the offence committed. 3 *G. c.* 18. *ſ.* 2.

XII. Inrolling deeds and wills.

1. No manors, lands, tenements, or hereditaments, or any intereſt therein, or rent or profit thereout, ſhall paſs, alter, or change from any papiſt, or perſon profeſſing the popiſh religion, by any deed or will, except ſuch deed within 6 months after date, and ſuch will within 6 months after the death of the teſtator, be inrolled in one of the courts of record at *Weſtminſter*, or within the county where they lie, by the *cuſtos rotulorum*, and two juſtices of the peace, and the clerk of the peace, or two of them at leaſt, whereof the clerk of the peace to be one. 3 *G. c.* 18. *ſ.* 6.

2. But leaſes made by papiſts to proteſtants, whereon the full yearly value, or the ancient or moſt accuſtomed yearly rent or more ſhall be reſerved, need not to be inrolled. 10 *G. c.* 4. *ſ.* 19.

3. And by the 28 *G.* 2. *c.* 10. ſuch deeds and wills ſhall be good, if they be inrolled before *Jan.* 1. 1756, if advantage hath not been taken of the default before *Jan.* 11. 1755. And there is generally the like clauſe of indemnity in ſome act of parliamene every two or three years.

4. Alſo no purchaſe made for full and valuable conſideration, by and for the ſole benefit of any proteſtant, ſhall be avoided for or by reaſon that any deed or will, thro' which the title is derived, hath not been inrolled; ſo as no advantage was taken thereof before the purchaſe, and ſo as no decree or judgment hath been obtained for want of ſuch inrollment. 28 *G.* 2. *c.* 10.

XIII. Double taxes.

By the land tax acts, papiſts and reputed papiſts, being of 18 years of age, who ſhall not have taken the oaths of allegiance, ſupremacy, and abjuration, ſhall pay double land tax.

XIV. Papiſts not to come to court.

1. No popiſh recuſant convict ſhall come into the court or houſe where the king or his heir apparent ſhall be (unleſs commanded by the king or council); on pain of 100 *l.* half to the king, and half to him who ſhall diſcover and ſue for the ſame in any court of record. 3 *J. c.* 5. *ſ.* 2.

2. And

2. And if any member of either houſe of parliament, not having taken the oaths of allegiance and ſupremacy, and made and ſubſcribed the declaration againſt popery, ſhall come into the king's preſence, or the court or houſe where he is (without licence from ſix of the privy council), he ſhall ſuffer as a popiſh recuſant convict, and ſhall be diſabled to hold any office, or to vote in either houſe of parliament, or to be plaintiff, guardian, executor, adminiſtrator, or to take any legacy or gift, and ſhall forfeit 500 *l.* to him who ſhall ſue. 30 *C.* 2. *ſt.* 2. *c.* 1.

XV. Not to come within ten miles of London.

1. All popiſh recuſants who ſhall come, dwell, or remain, within the city of *London*, or within ten miles thereof, who ſhall be indicted or convicted of ſuch recuſancy, or who ſhall forbear going to church to hear divine ſervice for 3 months, ſhall within ten days after ſuch indictment or conviction, depart from the ſaid city, and ten miles compaſs of the ſame; and ſhall alſo within the ſaid time deliver up their names to the lord mayor, if they dwell within the city or liberties thereof; and if they dwell in any other county, within ten miles of the city, they ſhall deliver up their names to the next juſtice; on pain of 100 *l.* half to the king, and half to him who ſhall ſue. 3 *J.* *c.* 5. *ſ.* 4.

2. And for the better diſcovering of papiſts within ten miles of *London*, every juſtice in the neighbouring counties, ſhall cauſe to be arreſted and brought before him every ſuch perſon within the ſaid limits, not being a merchant foreigner, as are or are reputed to be papiſts (except ambaſſadors ſervants), and tender to him the declaration againſt popery of the 30 *C.* 2. which if he ſhall refuſe to make and ſubſcribe, and afterwards continue within ten miles of *London*, he ſhall ſuffer as a popiſh recuſant convict. The juſtice to certify ſuch ſubſcription, or refuſal, into the king's bench, or to the next quarter ſeſſions. 1 *W.* *c.* 9.

XVI. Papiſts confined to their habitations.

1. Every perſon above 16 years of age, being a popiſh recuſant, and having any certain place of abode, who being convicted for not repairing to ſome church, chapel, or uſual place of common prayer to hear divine ſervice there, but forbearing the ſame contrary to law, ſhall within 40 days next after the conviction (if he be within the realm, and not hindred by impriſonment, by command of the king or council, or by ſickneſs, and in ſuch caſe in 20 days after the removal of ſuch impediment) repair to his uſual dwelling, and ſhall not remove above five miles from thence, unleſs he be licenſed as is herein after directed, on pain of forfeiting his goods, and alſo to the king his lands during life, unleſs they be cuſtomary or copyhold, and then to the lord of the manor. 35 *El.* *c.* 2. *ſ.* 3, 5.

And it ſeemeth that theſe ſhall be computed according to the *Engliſh* manner, allowing 1760 yards to a mile, and that the ſame ſhall be reckoned not by ſtreight lines, as a bird or arrow

may

may fly; but according to the neareſt and moſt uſual way. 1 *Hawk.* 25.

2. Having repaired to their dwelling, they ſhall within 20 days notify their coming, and preſent themſelves, and deliver their true names in writing to the miniſter of the pariſh and to the conſtable, and the miniſter ſhall enter the ſame in a book. 35 *El. c.* 2. *ſ.* 6.

3. And, after, the miniſter and conſtable ſhall certify the ſame in writing to the next ſeſſions; and the clerk of the peace ſhall enter the ſame in the rolls of the ſeſſions. 35 *El. c.* 2. *ſ.* 7.

4. But if ſuch perſon reſtrained ſhall be urged by proceſs, or be bound to appear in any of the king's courts, or be ſent for by the council, or be bound to render his body to the ſheriff on proclamation, he ſhall incur no penalty for removing for ſuch purpoſe. 35 *El. c.* 2. *ſ.* 13, 14.

5. Alſo, popiſh recuſants confined to their habitations by the 35 *El.* may be licenſed to remove,

(1) By the king.

(2) By three or more of the privy council, in writing under their hands; who may give licence to ſuch recuſant to travel out of the compaſs of five miles, for ſuch time as ſhall be contained in the licence, for their travelling, attending, and returning, and without any other cauſe to be expreſſed in the licence.

(3) If ſuch recuſant ſhall have neceſſary occaſion or buſineſs; then, upon licence in writing under the hands and ſeals of four of the next juſtices of the county or place, with the aſſent in writing of the biſhop; or of the lieutenant, or a deputy lieutenant of the county reſiding therein, under their hands and ſeals; in which licence ſhall be ſpecified both the cauſe of the licence, and the time how long the party licenſed ſhall be abſent in travelling, attending, and returning: In ſuch caſe, the perſon ſo licenſed may travel about ſuch his neceſſary buſineſs, and for ſuch time as ſhall be compriſed in the licence; he firſt taking oath before the ſaid four juſtices, or any of them, that he hath truly informed them of the cauſe of his journey, and that he ſhall not make any cauſeleſs ſtay. And ſuch perſon departing above five miles, not having ſuch licence, and not having taken ſuch oath, ſhall incur the penalty of the 35 *El.* abovementioned. 3 *J. c.* 5. *ſ.* 7.

XVII. Not to inherit, or take by deviſe.

If any perſon educated in the popiſh religion, or profeſſing the ſame, ſhall not within ſix months after he ſhall be 18 years of age, take the oaths of allegiance and ſupremacy, and ſubſcribe the declaration of the 30 *C.* 2. in the chancery, king's bench, or quarter ſeſſions, he ſhall (in reſpect of himſelf, but not of his heirs) be incapable to inherit or take any lands, by deſcent, deviſe, or limitation; but the next of kin, being a proteſtant, ſhall have the ſame. 11 & 12 *W. c.* 4. *ſ.* 4.

XVIII. Shall

XVIII. Shall not purchase.

1. Every papist, or person making profession of the popish religion, shall be disabled to purchase any lands, or profits out of the same, in his own name, or in the name of any other to his use, or in trust for him; but the same shall be void. 11 & 12 *W. c.* 4. *s.* 4.

2. But no sale of any lands for a valuable consideration by any person, being the reputed owner, or in possession of the rents and profits thereof, to be made to and for a protestant purchaser, shall be avoided on any pretence of disability in the act of the 11 & 12 *W. c.* 4. and of the 1 *J. c.* 4. incurred by any person making such sale, or by or through whom the title shall be derived; unless before such sale, the person intitled to take advantage of such disability, shall have recovered the lands, or given notice of his claim to the purchaser, or entred his claim at the quarter sessions. 3 *G. c.* 18. *s.* 4. But the above statute of the 11 & 12 *W.* shall continue, that papists shall not purchase. *s.* 5.

XIX. Shall not present to benefices.

1. A popish recusant convict shall be disabled to present, or grant any avoidance, to any ecclesiastical living, or nominate to any free school, hospital, or donative. 3 *J. c.* 5. *s.* 18.

2. And whereas by the 1 *W. c.* 15. any two justices who shall know or suspect or shall be informed, that any person is, or is suspected to be a papist, shall tender to him the declaration of the 30 *C.* 2. and if he shall not appear before the said justices, on notice to him given by warrant of the said justices, or left at his usual place of abode, or if he shall refuse to make and subscribe the declaration, they shall certify his name and place of abode at the next sessions to be there recorded by the clerk of the peace; It is enacted by the 1 *W. c.* 26. *s.* 2. that every person so recorded, shall from the time of such record, be disabled to present or nominate to any benefice, free school, hospital, or donative, as fully as if he were a popish recusant convict.

3. And where any person shall be possessed of any right of presentation or nomination as aforesaid, *in trust* for any papist or popish recusant, who shall be convicted or disabled by the 3 *J. c.* 5. or by the 1 *W. c.* 26. such trustee shall be disabled to present or nominate, or to grant any avoidance thereof. 1 *W. c.* 26. *s.* 3.

4. Also, it is further enacted, that every papist, or person making profession of the popish religion (that is, whether convicted by either of the former acts or not) and every child not being a protestant, under the age of 21, of every such papist or person professing the popish religion, and every mortgagee, trustee, or person any ways intrusted, directly or indirectly, by or for any such papist or person professing the popish religion, or such child as aforesaid, whether such trust be declared by writing or not, shall be disabled to present or nominate. 12 *An. st.* 2. *c.* 14. *s.* 1.

5. And

5. And the chancellor and ſcholars of the univerſity of *Oxford* ſhall preſent and nominate to the ſame, in the counties of *Oxford*, *Kent*, *Middleſex*, *Suſſex*, *Surrey*, *Hampſhire*, *Berkſhire*, *Buckinghamſhire*, *Glouceſterſhire*, *Worceſterſhire*, *Stoffordſhire*, *Warwickſhire*, *Wiltſhire*, *Somerſetſhire*, *Devonſhire*, *Cornwall*, *Dorſetſhire*, *Hereford*ſhire, *Northamptonſhire*, *Pembrokeſhire*, *Caermarthenſhire*, *Brecknockſhire*, *Monmouthſhire*, *Cardiganſhire*, *Montgomeryſhire*, the city of *London*, and other cities and towns within the ſaid counties:

And the chancellor and ſcholars of the univerſity of *Cambridge* ſhall preſent and nominate in the counties of *Eſſex*, *Hertfordſhire*, *Bedfordſhire*, *Cambridgeſhire*, *Huntingtonſhire*, *Suffolk*, *Norfolk*, *Lincolnſhire*, *Rutlandſhire*, *Leiceſterſhire*, *Derbyſhire*, *Nottinghamſhire*, *Shropſhire*, *Cheſhire*, *Lancaſhire*, *Yorkſhire*, *Durham*, *Northumberland*, *Cumberland*, *Weſtmorland*, *Radnorſhire*, *Denbighſhire*, *Flintſhire*, *Carnarvonſhire*, *Angleſeyſhire*, *Merionethſhire*, *Glamorganſhire*, and the cities and towns within the ſaid counties. 3 *J. c.* 5. *ſ.* 19. 20.

6. And if any truſtee, mortgagee, or grantee of an avoidance, ſhall preſent or nominate to any ſuch living, free ſchool, or hoſpital, whereof the truſt ſhall be for any recuſant convict or diſabled, without giving notice in writing to the univerſity, in three months after the avoidance ſhall happen; he ſhall forfeit 500*l.* to the univerſity. 1 *W. c.* 26. *ſ.* 4.

7. But the chancellors and ſcholars ſhall not preſent to any ſuch eccleſiaſtical living, any perſon who ſhall then have any other benefice with cure of ſouls; nor ſhall the perſon preſented be abſent from the ſame above 60 days in any one year. 1 *W. c.* 26. *ſ.* 5, 6.

8. And every *grant* of an eccleſiaſtical living, ſchool, hoſpital, or donative, by any papiſt or truſtee for him, ſhall be void, unleſs made *bona fide* for a full and valuable conſideration to a proteſtant purchaſer. And alſo every *deviſe* thereof, with intent to ſecure the benefit thereof to the heirs or family of ſuch papiſt, ſhall be void. 11 *G.* 2. *c.* 17. *ſ.* 5.

XX. Shall not teach ſchool.

If any papiſt ſhall keep ſchool, or take upon him the education, or government, or boarding of youth; he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3, 5.

XXI. Diſabled as to offices, law, phyſick.

1. No recuſant convict ſhall practiſe the common law, as a counſellor, clerk, attorney, or ſolicitor; nor ſhall practiſe the civil law, as advocate or proctor; nor practiſe phyſick, nor be an apothecary; nor ſhall be a judge, miniſter, clerk, or ſteward of or in any court, or keep any court, nor ſhall be regiſter or town clerk, or other miniſter or officer in any court; nor ſhall bear any office or charge, as captain, lieutenant, corporal, ſerjeant, ancient bearer, or other office in camp, troop, band, or company of

ſoldiers; nor ſhall be captain, maſter, governor, or bear any office of charge of or in any ſhip, caſtle, or fortreſs; but be utterly diſabled for the ſame: and every perſon offending herein, ſhall forfeit 100 *l.* half to the king, and half to him who ſhall ſue. 3 *J.* *c.* 5. *ſ.* 8.

2. And no popiſh recuſant convict, nor any having a wife being a recuſant convict, ſhall exerciſe any publick office, unleſs ſuch huſband, and his children above 9 years old, and his ſervants, go to church and conform. 3 *J.* *c.* 5. *ſ.* 9.

XXII. Not to be executor or adminiſtrator.

A popiſh recuſant convict ſhall be diſabled to be executor or adminiſtrator. 3 *J.* *c.* 5. *ſ.* 22.

XXIII. Not to be guardian.

A popiſh recuſant convict ſhall not have the cuſtody of any child as guardian: but the wardſhip ſhall go to the next of kin not being a recuſant, to whom the eſtate cannot lawfully deſcend. 3 *J.* *c.* 5. *ſ.* 22, 23.

XXIV. Shall be deemed excommunicate.

1. Every popiſh recuſant convict ſhall ſtand and be reputed to all intents and purpoſes diſabled, as a perſon excommunicated, and as if he had been ſo denounced by the laws of the realm. 3 *J.* *c.* 5. *ſ.* 11.

2. And on proceſs to the ſheriff, for apprehending a popiſh recuſant excommunicated, he may break open a houſe, or raiſe the power of the county. 3 *J.* *c.* 4. *ſ.* 35.

XXV. Popiſh baptiſm.

Every popiſh recuſant ſhall within one month next after the birth of any child, cauſe it to be baptized by a lawful miniſter in open church; or if it is infirm, to be baptized by a lawful miniſter; on pain of 100 *l.* one third to the king, one third to him who ſhall ſue, and one third to the poor. 3 *J.* *c.* 5. *ſ.* 14.

XXVI. Popiſh marriage.

1. Every man, being a popiſh recuſant convict, who ſhall be married otherwiſe than in ſome open church or chapel, and otherwiſe than according to the orders of the church of *England*, by a miniſter lawfully authorized, ſhall be utterly diſabled and excluded to have any eſtate of freehold into the lands of his wife, as tenant by the courteſy of *England*: And if ſhe have no lands, he ſhall forfeit 100 *l.* half to the king, and half to him who ſhall ſue. 3 *J.* *c.* 5. *ſ.* 13.

2. And every woman, being a popiſh recuſant convict, who ſhall be married in other form than as aforeſaid, ſhall be utterly excluded

excluded and disabled, not only to claim any dower or jointure, but also her widow's estate and frankbank in her husband's customary lands, and be disabled to have any part of his goods. 3 *J. c.* 5. *s.* 13.

3. But by the 26 *G.* 2. *c.* 33. After *March* 25. 1754, if they shall be married any where in *England*, other than in a church or publick chapel (unless by special licence from the archbishop of *Canterbury*), or without publication of banns, or licence, the marriage shall be null and void.

XXVII. Popish burial.

If any popish recusant, not being excommunicate, shall be buried in any place, other than the church or churchyard, or not according to the ecclesiastical laws; the executors or administrators of every such person so buried, shall forfeit 20*l.* one third to the king, one third to the informer or him who shall sue, and one third to the poor. 3 *J. c.* 5. *s.* 15.

XXVIII. Armour.

1. Any two justices, who shall know or suspect, or shall be informed, that any person is or is suspected to be a papist, may and shall tender to him the declaration in the act of the 30 *C.* 2. and if he shall not appear, after notice by warrant under hand and seal given to him, or left at his usual place of abode: or shall not make and subscribe the declaration; he shall be disabled to have or keep in his house or elsewhere, or in the possession of any other to his use, any arms, gunpowder or ammunition, except such weapons as shall be allowed by the sessions for the defence of his house or person. And any two justices may by warrant authorize in the day time any person, with the constable's assistance, to search such person's house for the same, and seize them for the use of the king. And the said justices shall deliver the same in open court at the next sessions for the use aforesaid; where also, they shall certify the name and place of abode of every person so subscribing, or not subscribing. 1 *W. c.* 15. *s.* 2, 3, 4.

2. And notwithstanding the taking away such armour, gunpowder, and munition, the said popish recusant shall be charged with the providing and maintaining of horse, and other armour, and munition, as other subjects, according to their several abilities. 3 *J. c.* 5. *s.* 29.

3. And every such person, not discovering and delivering them up to some justice in ten days after default in not appearing, or not subscribing as aforesaid, or hindring the seizure, shall be committed to gaol by any two justices for three months, and shall forfeit the arms, and pay treble value of them to the king, to be appraised by the justices at the next sessions. 1 *W. c.* 15. *s.* 5.

4. And every other person who shall conceal, or knowing thereof, not discover to a justice such arms or ammunition, or shall hinder the seizing thereof, shall be committed to gaol by two

juſtices for three months, and ſhall forfeit to the king the treble value of the arms. 1 *W.* *c.* 15. *ſ.* 6.

5. And every perſon who ſhall diſcover ſuch arms or ammunition, ſo as they ſhall be ſeized, ſhall have a reward equal to the value thereof ordered by the ſeſſions out of the goods of the offender, to be levied by diſtreſs. 1 *W.* *c.* 15. *ſ.* 7.

XXIX. Horſes.

1. Every papiſt making default in not appearing, or not ſubſcribing (as in the former ſection concerning armour), ſhall not have or keep in his poſſeſſion, or in the poſſeſſion of any other to his uſe, or at his diſpoſition, any horſe above the value of 5 *l.* to be ſold And two juſtices may authorize any perſon, with the conſtable's aſſiſtance, to ſeize all ſuch horſes for the king's uſe. 1 *W.* *c.* 15. *ſ.* 9.

2. And if any perſon ſhall conceal, or aſſiſt in concealing, any ſuch horſe, he ſhall be committed by warrant of two juſtices to priſon for three months, and ſhall forfeit to the king treble the value of ſuch horſe. 1 *W.* *c.* 15. *ſ.* 10.

XXX. Popiſh wife.

1. If any married woman, being a popiſh recuſant convict, ſhall not conform in three months, ſhe ſhall be committed to priſon, by one of the privy council, or by the biſhop, if ſhe be a baroneſs; or, if under that degree, by two juſtices (1 *Q.*) until ſhe ſhall conform, unleſs her huſband ſhall pay to the king for her offence for every month 10*l.* or elſe the third part of his lands, ſo long as ſhe ſhall continue out of priſon. 7 *J.* *c.* 6. *ſ* 28.

2. A wife being a popiſh recuſant convict, her huſband not being ſo, ſhall forfeit to the king two parts of her jointure and dower, ſhall not be executrix or adminiſtratrix of her huſband, nor ſhall have any ſhare of his goods and chattels. 3 *J.* *c.* 5. *ſ.* 10.

3. But if ſhe hath been married (out of *England*) otherwiſe than according to the form of the church of *England*, ſhe ſhall be diſabled to claim any dower or jointure, or widow's eſtate, of her huſband's lands; and ſhall have no part of his goods. 3 *J.* *c.* 5. *ſ.* 13. And if in *England*, the marriage ſhall be void. 26 *G.* 2. *c.* 33.

XXXI. Heir of a popiſh recuſant.

If the heir of a popiſh recuſant ſhall be under 16, at the death of ſuch recuſant, and ſhall after ſuch age become recuſant, he ſhall be charged with the penalties happening him by reaſon of ſuch his anceſtor's recuſancy, until ſuch time as he ſhall conform. 7 *J.* *c.* 4. *ſ.* 3, 4.

XXXII. *Proteſtant children of papiſts.*

If any popiſh parent, in order to the compelling his child being a proteſtant to change his religion, ſhall refuſe to allow him a fitting maintenance, the lord chancellor may make order therein. 11 & 12 *W. c.* 4. *ſ.* 7.

XXXIII. *Oaths.*

1. By the toleration act, if any perſon being required by a juſtice of the peace, ſhall refuſe to take the oaths of allegiance and ſupremacy, and to make and ſubſcribe the declaration againſt popery of the 30 *C.* 2. he ſhall be committed by the ſaid juſtice to priſon; and, at the next ſeſſions, if he ſhall again refuſe to make and ſubſcribe the ſaid declaration, he ſhall be deemed and ſuffer as a popiſh recuſant convict. *ſ.* 12.

2. And by the 1 *G. ſt.* 2. *c.* 13. Two juſtices may ſummon any perſon whom they ſhall ſuſpect to be diſaffected, by writing under their hands and ſeals to appear before them at a time prefixed, to take the oaths of allegiance, ſupremacy, and abjuration: which ſummons ſhall be ſerved on ſuch perſon, or left at his dwelling houſe, or uſual place of abode, with one of the family there; and if ſuch perſon ſhall neglect or refuſe to appear, then, on due proof made upon oath of ſerving the ſaid ſummons, they ſhall certify the ſame to the next ſeſſions, to be there recorded: And if ſuch perſon ſhall neglect or refuſe to appear and take the oaths at the ſaid ſeſſions (his name being publickly read at the firſt meeting of the ſaid ſeſſions), he ſhall be taken and adjudged a popiſh recuſant convict. And the ſame ſhall be from thence certified by the clerk of the peace, into the chancery, or king's bench, to be there recorded. *ſ.* 10, 11.

XXXIV. *Miniſter to preſent papiſts.*

Miniſters ſhall preſent popiſh recuſants to the biſhop, every year before *June* 24. *Can.* 114.

XXXV. *Recuſants conforming.*

1. A recuſant conforming ſhall be diſcharged of the penalties which he might otherwiſe ſuſtain in reſpect of his recuſancy. 1 *J. c.* 4. *ſ.* 2.

2. And by the 11 *G.* 2. *c.* 17. Papiſts conforming to the proteſtant religion, and taking the oaths, and ſubſcribing the declaration of the 30 *C.* 2 in the chancery, king's bench, or quarter ſeſſions, (to be there recorded,) ſhall have their eſtates freed of the diſabilities incurred before ſuch conforming. *ſ.* 1, 2, 3, 4.

3. And a recuſant convicted having conformed, ſhall at leaſt once a year receive the ſacrament in the pariſh church, on pain of forfeiting for the firſt year 20 *l.* for the ſecond 40 *l.* and for every year after 60 *l.* half to the king, and half to him who ſhall ſue in

the courts at *Westminster*, or at the assizes, or sessions. 3 *J. c.* 4. *s.* 2, 3.

And at the sessions where an indictment for such offence is taken, the justices shall have power to make proclamation, by which it shall be commanded that the body of the offender shall be rendred to the sheriff, bailiff, or gaoler, before the next sessions; And if he shall not appear of record next sessions, then upon such default recorded, he shall stand convicted. *s.* 7.

And no indictment or other proceeding shall be reversed for want of form, nor by any thing but by direct traverse to the point of not receiving the sacrament. *s.* 16.

But the husband shall not be charged with a penalty for the wife's offence in not receiving the sacrament; nor shall the wife be chargeable for not receiving during her marriage. *s.* 40.

XXXVI. Ecclesiastical jurisdiction.

It is generally provided in the foregoing acts, that nothing therein shall take away or abridge the authority or jurisdiction of ecclesiastical censures.

Note; The oaths and declarations abovementioned, are inserted at large in the title Oaths.

Posse comitatus. See Arrest.

Post.

Postmaster's oath.

1. NO person shall be capable of exercising any employment relating to the post office, or any branch thereof, or be any way concerned in receiving, sorting, or delivering of letters, before he shall have taken the following oath, before a justice of the peace where he resides:

I A. B. *do swear, that I will not wittingly, willingly, or knowingly open, detain, or delay any letter or letters, packet or packets, which shall come into my hands, power, or custody, by reason of my employment in or relating to the post office; except by the consent of the person or persons to whom the same is or shall be directed, or by an express warrant in writing under the hand of one of the principal secretaries of state for that purpose; or except in such cases, where the party or parties to whom such letter or letters, packet or packets shall be directed, or who is or are chargeable with the payment of the port or ports thereof, shall refuse or neglect to pay the same, and except such letters or packets, as shall be returned for want of true directions, or when the party or parties to whom the same is or shall be directed, cannot be found: And that I will not any way imbezil*

any

any ſuch letter or letters, packet or packets, as aforeſaid. 9 An. c. 10. ſ. 41.

And if any perſon ſhall do any thing contrary to the ſaid oath, he ſhall forfeit 20 *l.* and his office. *ſ.* 40.

2. And perſons appointed to meaſure the poſt roads, ſhall be ſworn to perform the ſame, according to the beſt of their ſkill and judgment, before a juſtice of the peace, who ſhall make a certificate thereof in writing, to be entred in the general poſt office, without fee. *ſ.* 12. Meaſurer's oath.

3. All ſums not exceeding 5 *l.* that ſhall be due from any perſon for letters, or which ſhall be received for the carriage of letters without anſwering the ſame to the receiver general, ſhall be recovered before juſtices of the peace in the ſame manner as ſmall tithes: And ſuch debt ſhall be preferable in payment before any debt to any private perſon. *ſ.* 30. Money for poſtage how to be levied.

And the rates or prices for the carriage of letters ſhall be according to the ſeveral rates and ſums following:

For every ſingle letter not above 80 miles from the general poſt office, 3 *d.* Above 80 miles, 4 *d.* And for every letter directed on board, or from on board any ſhip, 1 *d.* more.

Within the limits of the penny poſt, 1 *d.* (at putting in, and 1 *d.* at delivery, 4 *G.* 2. *c.* 33.)

From *Edinburgh*, *Dumfries*, *Dublin*; to *London*, 6 *d.*

From *France*, *Holland*, *Hamburgh*, 10 *d.*

From *Italy*, *Sicily*, *Germany*, *Switzerland*, *Denmark*, *Sweden*, and all parts of the North (thro' *Holland*); and from *New York*, 1 *s.*

From *Italy*, *Sicily*, *Turkey*; through *France*, 1 *s.* 3 *d.*

From *Spain*, *Portugal*, *Jamaica*, *Barbadoes*, *Antegoa*, *Montſerrat*, *Nevis*, *St. Chriſtophers*, 1 *s.* 6 *d.*

And a double letter ſhall pay double, and an ounce ſhall pay four times the price of a ſingle letter. 9 *An. c.* 10. *ſ.* 6.

And bills of exchange wrote on the ſame piece of paper with a letter, and ſeveral letters to ſeveral perſons wrote on the ſame piece of paper, ſhall pay as ſo many diſtinct letters. 6 *G. c.* 21. *ſ.* 51.

And writs or other proceedings at law, incloſed, or writ on the ſame piece of paper with a letter, ſhall pay as ſo many diſtinct letters. 26 *G.* 2. *c.* 13. *ſ.* 6.

But merchants accounts not exceeding one ſheet, bills of exchange, invoices, bills of lading (ſent or brought over ſea, 6 *G. c.* 21. *ſ.* 52.) ſhall be allowed without rate in the price of the letters. 9 *An. c.* 10. *ſ.* 13.

But patterns or ſamples of goods, or pieces of any thing, tho' not paper, incloſed in a letter, or affixed thereto, if under an ounce weight, ſhall pay as a double letter. 26 *G.* 2. *c.* 13. *ſ.* 7.

4. And none but the poſtmaſter ſhall carry letters; on pain of 5 *l.* for every offence, and 100 *l.* a week beſides; half to the king, and half (with coſts) to him that ſhall ſue in any court of record. 9 *An. c.* 10. *ſ.* 17, 19. None but the poſtmaſter to carry letters.

Except letters carried *gratis* by carriers or ship masters with goods, instruments out of any court, and letters sent by friends in their journey, or by a special messenger. 9 *An. c.* 10. *s.* 2.

Pound-breach. See Distress.

Powder (for the hair). See Excise.

Praemunire.

What it is.

1. PRÆMUNIRE is so called from a word in the writ, *Præmunire facias præfatum A. B. quod tunc sit coram nobis, &c.* where *præmunire* is used for *præmonere*, to warn the person to appear, as is directed in the statute of the 27 *Ed.* 3. *c.* 1. hereafter following. 1 *Inst.* 129.

Power of justices of the peace therein.

2. Notwithstanding that *præmunire* is not within the letter of the commission of the peace, yet inasmuch as it is against the peace of the king and of the realm, any justice of the peace may, either on his own knowledge, or the complaint of others, cause any person to be apprehended for such offence; and he may take the examination of the person so apprehended, and the information of all who can give material evidence against him, and put the same in writing; and bind over the witnesses to the king's bench or gaol delivery; and certify his proceedings to the same court to which he shall bind over such informers. 2 *Haw.* 39. *Hale's Pl.* 168.

Impeaching judgments in the king's courts, a præmunire.

3. By the 27 *Ed.* 3. *c.* 1. called the statute of Provisors, They who shall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or which do sue in any other court, to defeat or impeath the judgments given in the king's court, shall have a day, containing the space of two months, by warning to be made to them, by the sheriffs or other officers, to appear to answer in their proper persons for the contempt: And if they come not at the said day in their proper person to be at the law, they, their procurators, attornies, executors, notaries, and maintainers, shall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies wheresoever they may be found shall be taken and imprisoned, and ransomed at the king's will. And upon the same a writ shall be made, to take them by their bodies, and to seize their goods, lands, and possessions, into the king's hands. And if it be returned, that they be not found, they shall be put in exigent, and outlawed.

Suing out foreign process, a præmunire.

4. And by the 16 *R.* 2. *c.* 5 commonly called the statute of *præmunire*, and to which the several subsequent statutes do refer; both those who pursue, or cause to be pursued, in the court of *Rome*, or elsewhere, any processes or instruments, or other things whatso-

whatſoever which touch the king, againſt him, his crown and regality, or his realm; and alſo thoſe who ſhall bring, receive, notify, or execute them; and their fautors and abettors, ſhall be out of the king's protection; and their lands and tenements, goods and chattels, forfeit to the king; and they ſhall be attached by their bodies, if they may be found, and brought before the king and his council, there to anſwer; or proceſs ſhall be made againſt them by *præmunire facias*, in manner as it is ordained in other ſtatutes of proviſors.

And in theſe two ſtatutes, as above recited, are contained the pains and penalties of what is called a *præmunire*.

Suing for temporal matters in the ſpiritual court, a præmunire.

5. And ſince theſe acts it hath been adjudged, that a ſuit in the eccleſiaſtical court (as for debt) was in caſe of *præmunire*. And that a perſon ſuing in the eccleſiaſtical court, for the forgery of a will, doth incur the danger of a *præmunire*; becauſe the party grieved might have his remedy by the common law. Alſo judgment againſt the defendant was given in a *præmunire*, for ſuing for tithes in the eccleſiaſtical court, alledging the ſame to be ſevered from the nine parts. 3 *Inſt.* 120, 121. But it ſeemeth, that a ſuit in that court, for a matter which appears not by the libel itſelf, but only by the defendant's plea, or other matter ſubſequent, to be of temporal cognizance, is not within the ſtatute; becauſe it appears not that either the plaintiff or judge knew it to be ſo. 1 *Hav.* 51, 52.

Refuſing to elect or conſecrate a biſhop.

6. By the 25 *H.* 8. *c.* 20. Refuſing to elect or conſecrate the perſon nominated by the king to a biſhoprick, is made a *præmunire*.

Suffragans exceeding their commiſſion.

7. By the 26 *H.* 8. *c.* 14. No ſuffragan ſhall exerciſe any juriſdiction, otherwiſe than by the biſhop's commiſſion, on pain of a *præmunire*.

Delaying a ſuit on the ſtatute of monopolies.

8 To delay a ſuit, on the ſtatute of monopolies, 21 *J.* *c.* 3. ſhall be a *præmunire*. *ſ.* 12.

Affirming that the parliament can make laws without the king.

9. By the 13 *C.* 2. *c.* 1. To affirm maliciouſly or adviſedly, by ſpeaking or writing, that both or either houſes of parliament have a legiſlative power without the king, is a *præmunire*.

Sending priſoners out of the realm.

10. By the 31 *C.* 2. *c.* 2. No ſubject ſhall be ſent a priſoner out of the realm, on pain of a *præmunire*.

Affirming that the pretender hath any right to the crown.

11. By the 6 *An.* *c.* 7. If any perſon ſhall maliciouſly and directly by preaching, teaching, or adviſed ſpeaking affirm, that the pretender hath any right to the crown, or any other perſon otherwiſe than as by the acts of parliament, he ſhall incur a *præmunire*.

Other præmunires.

12. The offences above ſpecified are ſuch as do not fall in with the other titles of this book. Other offences incurring a *præmunire*, are inſerted under the titles to which they do more properly belong; as in the titles, *Oaths*, *Gunpowder*; and eſpecially in the title *Popery*, under which there are many offences of this kind, occaſioned by the papal incroachments from time to time in this kingdom.

Judgment in præmunire.

13. The judgment in *præmunire* is, that the defendant *ſhall be from thenceforth out of the king's protection, and his lands and tenements*,

ments, goods and chattels forfeited to the king, and that his body shall remain in prison at the king's pleasure. 1 Inst. 129.

Out of the king's protection] So odious was this offence formerly, that a man who was attainted of the same, might have been slain by any one without danger of law: because it was provided by law, that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy: and therefore by the 5 *El. c.* 1. it is enacted, that it shall not be lawful for any one to slay any person attainted in or upon a *præmunire*. 1 *Inst.* 130.

But he is so far out of the king's protection, that he is disabled to bring an action for any injury whatsoever. And no one, knowing him guilty, can with safety give him aid, comfort, or relief. 1 *Inst.* 129, 130. 1 *Haw.* 55.

And Mr. *Hawkins* says it has been questioned, whether he hath a right to demand surety of the peace. But *Lambard* and *Dalton*, which are the authorities he cites for it, do incline to think that he hath such right. *Lambard* alledges for it the statute of the 5 *El.* abovementioned; and *Dalton* asserts it without doubting. *Lamb.* 80. *Dalt.* 272. 1 *Haw.* 126.

Lands and tenements —— forfeited] Yet tenant in tail shall only forfeit lands during life: for albeit the statute of the 16 *R.* 2. *c.* 5. enacteth, that lands and tenements shall be forfeited, that must be understood of such an estate as he may lawfully forfeit, and that is, during his own life. 1 *Inst.* 130.

Corruption of blood.

14. Attainder in *præmunire* worketh no corruption of blood. 1 *Inst.* 391.

Presentment.

A Presentment is that which the grand jury find and present to the court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing else differs from an indictment.

There are other presentments of churchwardens, constables, surveyors of the highways, and justices of the peace; all which may be seen under their proper titles.

Prison and prisoner. See Gaol.

Prison-breaking.

IT seemeth that at the common law all prison breaches were felonies, if the party were lawfully in custody for any cause whatsoever. 2 *Haw.* 123.

But by the following statute, which is called the statute *de frangentibus prisonam*, the severity of the common law is moderated; in the explication of which statute, will be contained the whole learning relating to this subject.

The statute is this: *Concerning prisoners which break prison, the king willeth and commandeth, that none that breaketh prison shall have judgment of life or member, for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convict thereupon, according to the law and custom of the realm.* 1 Ed. 2. st. 2.

Concerning prisoners which break] Therefore if the prison be broken by a stranger, and not by the prisoner, or by his procurement, this is no felony in the prisoner. *Hale's Pl.* 108.

Which break prison] It seems clear, that any place whatsoever, wherein a person under a lawful arrest for a supposed crime, is restrained of his liberty, whether in the stocks, or street, or in the common gaol, or the house of a constable, or private person, is properly a *prison* within this statute; for imprisonment is nothing else but a restraint of liberty. 2 *Haw.* 124.

And therefore this extendeth as well to a prison in law, as to a prison in deed. 2 *Inst.* 589.

But there must be an actual *breaking*; for if the door be open and he goes out, it is not felony, but a misdemeanor only. 2 *Inst.* 589. 2 *Haw.* 125.

But if the prison be fired without the privity of the prisoner, he may lawfully break it to save his life. *Hale's Pl.* 108.

Also it seems that no breach of prison will amount to felony, unless the prisoner escape. 2 *Haw.* 125.

That none that breaketh prison shall have judgment of life or member] That is, shall be guilty of felony. But nevertheless he is still punishable as for a high misprision, by fine and imprisonment; for i cannot be thought the meaning of the statute, in ordaining that such offences shall not be punished as capital ones, to intend, that they shall not be punished at all. 2 *Haw.* 128.

Nevertheless, by the 3 *Ed.* 1. *c.* 15. Those who have broken prison are not *bailable* by justices of the peace; and that for two reasons: 1. Because it carries a presumption of guilt. And, 2. Because it is a superadded offence to the former for which they stood committed. 2 *H. H.* 133.

Except the cause for which he was taken and imprisoned, did require such judgment] This is to be intended of a *lawful* cause; and therefore *false imprisonment* is not within this act. 2 *Inst.* 590.

Imprisonment is a restraint of a man's liberty under the custody of another, by lawful warrant, in deed, or in law. Lawful warrant is, either when the offence appeareth by matter of record, as when the party is taken upon an indictment; or when it doth not appear by matter of record, as when a felony is done, and the offender by a lawful *mittimus* is committed to gaol for the same: But between these two cases there is a great diversity; for in the first case, whether any felony were committed or no, if the offender be taken by force of a *capias*, the warrant is lawful, and if he break prison it is felony, altho' no felony were committed; but in the other case, if no felony be done at all, and yet he is committed to prison for a supposed felony, and break prison, this is no felony, for there is no *cause*. 2 Inst. 590.

So that the cause must be just, and not feigned, for things feigned require no judgment: Thus if a man give another a mortal wound, for which he is committed to prison, and breaketh prison, and the other dieth of the wound within the year, this death hath relation to the stroke; but because relations are but fictions in law, and fictions are not here intended, this prison-breaking is not felony. 2 *Inst.* 591.

So that the offence for which the party was imprisoned, must be a capital one at the time of the offence, and not become such by a matter subsequent. 2 *Haw.* 126.

And the cause must be expressed in the *mittimus*, altho' not so certainly as in an indictment, yet with such convenient certainty as it may appear judicially that the offence requireth such judgment; as, not for felony generally, but for felony in stealing such a horse, and the like. 2 *Inst.* 591.

But if the offence for which the party is committed, be supposed in the *mittimus* to be of such a nature as requires a capital judgment, yet if in the event it be found to be of an inferior nature, and not to require such a judgment, it seems difficult to maintain, that the breaking of the prison or a commitment for it can be felony; for the words of the statute are, *except the cause for which he was taken and imprisoned did require such judgment*; and here it appears, that the offence, which is the cause of his imprisonment, doth not require such a judgment. 2 *Haw.* 126.

But if a man be committed by lawful warrant, for *suspicion* of felony done, if he break prison, he may be indicted for that escape, albeit the commitment be for suspicion of felony, and yet no judgment can be given against him for suspicion, but for the felony itself, whereof he is suspected. 2 *Inst.* 592.

And an indictment that such a person *feloniously broke the prison* generally, is not good; but it ought to rehearse the specialty of the matter, that he being imprisoned for such or such a felony, broke the prison. 2 *Inst.* 591.

But if the party be only arrested for, and in his *mittimus* charged with a crime which doth not require judgment of life or member, as petit larceny, or homicide by self defence or by misadventure, and the offence be in truth no greater than the *mittimus* doth suppose it to be, it is clear, from the express words of the statute, that a breaking of the prison cannot amount to felony. 2 *Haw.* 126.

But

But if a felony be made by a subsequent statute, and an offender is committed thereupon; if he breaks prison, it is felony. For since all breaches of prison were felonies by the common law, which is restrained by this statute in respect only of imprisonment for offences not capital; when an offence becomes capital, it is as much out of the benefit of the statute, as if it had always been so. *Ha. Pl.* 108. 2 *Haw.* 126.

Also it is said, that the party may be arraigned for prison-breaking, before he be convicted of the crime for which he was imprisoned; for that it is not material whether he were guilty of such crime or not; for the words of the statute are, *for which he was taken and imprisoned.* 2 Haw. 127.

But if he is first indicted and acquitted of the principal felony, he shall not be indicted for the breach of prison afterwards; for it being cleared that he was not guilty of the felony, he is in law as a person never committed for felony, and so his breach of prison is no felony. 1 *H. H.* 612.

But the gaoler shall not be punished as a felon for the party's breach of prison, unless he voluntarily consented to it; but it seems to be a negligent escape in the gaoler, for which he may be punished by fine and imprisonment, because there wanted either that due strength in the gaol, or that due vigilance in the gaoler or his officers, that should have prevented it: and if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to retake them that escape. 1 *H. H.* 601.

And therefore if a criminal endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71.

Indictment for prison-breaking, by escaping from a constable.

THE *jurors for our lord the king upon their oath present, that* A. C. *late of* ——— *yeoman, constable of our said lord the king in and for the town of* ——— *in the said county, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *within the town and constablewick aforesaid, in the county aforesaid, did take and arrest one* A. O. *late of* ——— *labourer, on suspicion of having committed a certain felony, in feloniously taking and carrying away one black gelding, the property of* ——— *of the value of* ——— *and thereupon he the said* A. O. *under the custody of him the said* A. C. *the constable aforesaid, was brought before* J. P. *esquire, one of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and he the said* J. P. *by his warrant directed to the said* A. C. *and others, did command the said* A. C. *to carry and convey the said* A. O. *to the gaol of our said lord the king at* ——— *in the county aforesaid, there to be safely kept, until he should be lawfully delivered from thence; by virtue*

virtue of which said warrant, he the said A. O. *was taken and detained by him the said* A. C. *and as he the said* A. C. *was conveying and carrying him the said* A. O. *to the gaol aforesaid, afterwards, to wit, on the* ——— *day of* ——— *in the year aforesaid, he the said* A. O. *at* ——— *aforesaid in the county aforesaid, with force and arms, did feloniously break away and escape from and out of the custody of him the said* A. C. *the constable aforesaid, against the will of him the said* A. C. *and against the peace of our said lord the king, his crown and dignity.*

Indictment for breaking out of gaol.

THE *jurors for our lord the king upon their oath present, that* A. O. *late of* ——— *in the county aforesaid, labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforesaid in the county aforesaid, was arrested, imprisoned, and detained, in the gaol of our said lord the king, for a certain felony by him committed, that is to say, for the feloniously taking and carrying away one black gelding, the property of* ——— *of the value of* ——— *and that he the said* A. O. *on the* ——— *day of* ——— *in the year aforesaid, with force and arms, the aforesaid gaol of our said lord the king at* ——— *aforesaid in the county aforesaid feloniously did break, and thereby did escape from and out of the said gaol, against the peace of our said lord the king, his crown and dignity.*

Privileged place. See Rescue.

Process.

Process by the commission.

1. BY the commission of the peace, the justices in sessions have power to *make and continue processes upon indictments, against the persons indicted, until they can be taken, surrender themselves, or be outlawed.*

Process or indictments taken in the tourn.

2. And by the statute of the 1 *Ed.* 4. *c.* 2. Indictments and presentments taken in the sheriff's tourn, shall be delivered to the next sessions, who may award process thereupon, in like form as if they had been taken before themselves.

Process by justices out of sessions.

3. And the law also in several cases in express words directs process to be made by justices out of sessions; and in other cases by necessary implication: as where a statute doth give power to justices out of sessions to inquire, hear, and determine, there they may make process to cause the party to come and answer, otherwise they cannot proceed to hear and determine: and this may be either before or after presentment or indictment as the several statutes do require: Before presentment or indictment it is called a *warrant*; after presentment or indictment it is properly called *process*. *Dalt. c.* 193.

4. Commonly

4. Commonly an indictment, being but an accusation against a man, is of no force but only to put him to answer unto it. And hereof all process hath the name, because it *proceedeth* or goeth out upon former matter either original or judicial. *Lamb.* 519. Process, what.

5. And it seemeth plain, from the nature of the thing, that there can be no need of process, where the defendant is present in court, but only where he is absent. 2 *Haw.* 281. No need of process, if the party is present.

6. The process ought to be in the name of the king. And if it issue from the king's bench, it ought to be under the teste of the chief justice; and if it issue from any other court, there seems to be the same reason, that it ought to be under the teste of the first in the commission. 2 *Haw.* 283. To be in the king's name.

7. Upon an indictment in sessions, there must be 15 days between the teste and return of the *venire*, but if the entry be by consent of parties, the *venire* may be returnable *immediate*, and the trial be the same day. 3 *Salk.* 371. When returnable.

8. Process on an indictment or appeal of death, is one *capias*, and then an exigent: But in case of any other felony, then by the 25 *Ed.* 3. *c.* 14. two *capias's*, and then an exigent. *Hal. Pl.* 209. 2 *Haw.* 303. *Crown Circ.* 21. Process for felony.

9. The ordinary processes upon all indictments of trespass against the peace, or of other offences against penal statutes, not being felony, or a greater offence, are as follows; First, if the offender be absent, a *venire facias*, which is but in nature of a summons to cause the party to appear, shall be awarded, except where other process is directed by some statute. 2 *Haw.* 283. Process under felony.

If it appear by the return to such *venire*, that the party hath lands in the county, whereby he may be distrained, the *distress infinite* shall be awarded from time to time, till he do appear; and by force hereof he shall forfeit on every default so much as the sheriff shall return upon him in issues. But if a *nihil* be returned on such a *venire*, then three *capias's*, that is a *capias*, *alias*, and *pluries* shall issue. 2 *Haw.* 283.

Where the inhabitants of a parish are indicted or presented, the process is first a *venire*, then a *distringas*. *Crown Circ.* 21.

10. By the 21 *J.* *c.* 4. by which all popular actions on penal statutes are restrained to their proper counties, the like process in every popular action, bill, plaint, suit, or information, on a penal statute, before the quarter sessions (or higher courts) shall be awarded as in an action of trespass *vi & armis* at the common law. Process on informations.

And consequently, the process in all such suits must be by attachment or *pone per vadios*, and after by *distress infinite*, where by the return the party appears to be sufficient, otherwise by *capias*. 2 *Haw.* 284.

11. If a defendant appear to an indictment of felony, and afterwards before issue joined make an escape, either from his bail, or from prison; the common *capias*, *alias*, and *pluries* shall be awarded against him, unless there had been an *exigent* before, in which case a new exigent shall be awarded. 2 *Haw.* 285. Process on an escape.

12. The *exigent* shall not be *awarded against accessaries*, until the principal shall be attainted. 3 *Ed.* 1. *c.* 14. 2 *Haw.* 306. Process against accessaries.

13. By

Process into a foreign county.

13. By the 8 *H.* 6. *c.* 10. *On indictments for treason, felony, or trespass, against persons dwelling in other counties than where the indictment is taken, before any exigent awarded, presently after the first writ of* capias *awarded and returned, another writ of* capias *shall be awarded, directed to the sheriff of the county whereof the person indicted was supposed to be conversant by the same indictment, returnable before the same justices or others before whom he is indicted, at a certain day, containing the space of* 3 *months from the date of the said last writ, where the counties are holden from month to month; and where they are holden from* 6 *weeks to* 6 *weeks, he shall have* 4 *months, until the return of the same writ: by which writ of second* capias *it shall be commanded to the same sheriff to take the person indicted by his body, if he can be found within his bailiwick, and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted shall appear before the said justices or others, in the county, liberty, or franchise where he is indicted, at the day contained in the said last writ of* capias, *to answer to the king of the felony, treason, or trespass, whereof he is so indicted: After which second writ of* capias *so served and returned, if he which is so indicted come not at the day of the same writ of* capias *returned, the exigent shall be awarded. And every exigent and outlawry otherwise awarded or pronounced shall be void.*

And if any such indictment shall be removed by certiorari, *then before the exigent awarded, presently after such first* capias *returned, another writ of* capias *shall be directed as before, returnable before the king in his bench.*

But this shall not extend to indictments taken in the county of Chester.

Also if any person be indicted of felony or treason, and at the time of the same felony or treason supposed was conversant within the county whereof the indictment maketh mention, the like process shall be made against the person so indicted, as hath formerly been used; that is, without sending process into the other county.

But every person indicted in the form aforesaid, after he is duly acquit by verdict, shall have an action upon his case, against the procurer of such indictment; and if such procurer be attainted thereof, the plaintiff shall recover treble damages. Which seemeth to be upon account of the distance at which he is supposed to live, from the place where he is indicted, and consequently his extraordinary trouble in that behalf.

Dwelling in other counties] If the defendant be named of *B.* and late of *C.* there is no need of any *capias* to the sheriff of the county where *C.* lies, because it appears that the defendant is at present conversant at *B.* But if a defendant be named of no certain place at present, but only late of *B.* and late of *C.* and late of *D.* being all of them in counties different from that wherein the prosecution is commenced, a *capias* shall go to the sheriff of every one of those counties. 2 *Haw.* 306.

Shall be void] Not utterly void, but only voidable by writ of error. 2 *Haw.* 306.

County

County of Chester] But it may be awarded into the counties palatine of *Lancaster* and *Durham*; and it seems that it shall be directed to, and returned by the chancellor of *Lancaster*, or bishop of *Durham*: And it hath been said, that if he will not return it, the exigent may be awarded as well as if he had returned it; because the court (of the sessions at least) cannot compel him to return it, and the prosecution might be unreasonably delayed, if the proceedings were to be stayed till he should return it. 2 *Haw.* 305. *Hal. Pl.* 209, 210.

Mr. *Marrow* saith, that by the equity of this statute, if a person indicted in one county is imprisoned in another, the justices may award an *habeas corpus* to remove him before themselves. *Lamb.* 526.

14. Concerning the execution of the process, it is laid down as a general rule, that where ever the king is a party to the suit (as he certainly is to all informations and indictments), the process ought to be executed by the sheriff himself, and not by the bailiff of any franchise, whether it have the clause *non omittas* or not, and whether the defendant be within a franchise or in the county at large, for the king's prerogative shall be preferred to any franchise: But it is said, that this is to be intended only where in the grant of the franchise no mention is made of causes to which the king is a party. 2 *Haw.* 284. To be executed by the sheriff.

15. And if the party be in an house, if the doors be shut, and the sheriff (having given notice of his process) demand admittance, and the doors be not opened, he may break open the doors and enter to take the offender. 2 *H. H.* 202. Breaking open doors.

16. But no person, on the lord's day, shall serve or cause to be served any writ, process, warrant, order, or judgment (except in cases of treason, felony, or breach of the peace); but the service thereof shall be void, and the person serving the same shall be liable to answer damages to the party grieved, in the same manner as if he had done it without any writ, process, warrant, order, or judgment at all. 29 *C.* 2. *c.* 7. *s.* 6. Process on a Sunday.

17. It seems to be agreed, that every suit, whether civil or criminal, and also every process in such suit against jurors, ought to be properly continued from day to day, from its commencement to its conclusion, without any the least gap or chasm; and the suffering any such gap or chasm is properly called a *discontinuance*; and the continuing the suit by improper process (as by a *capias* instead of a *distringas*), or by giving the parties an illegal day, is properly called a *miscontinuance*; and if the justices, before whom the matter is depending, do not come on the day to which it is continued, it is said to be *put without day*, and cannot be revived without a re-summons or re-attachment. 2 *Haw.* 298, 300. Process discontinued.

Now process may be discontinued several ways. As, 1. Where the second is not tested on the very same day, on which the first is returnable. 2. Where there is a sessions intervening between the teste and the return of a *capias*, that the defendant may not be imprisoned an unreasonable time. But it is no objection to an *exigent*, that it is not returnable the next sessions, because it must

allow time for five counties to be holden between its teste and return. 3. Where after issue or demurrer, the court gives the party a day to a distant sessions, without making any continuance to that immediately following. 4. Where the sessions to which the suit is continued is adjourned, and the suit is not adjourned accordingly. 5. Where any of the parties are described in any continuance of the suit, whether on the roll, or by process, by a name or addition variant from those in the original, tho' only in one letter. 6. Where a *venire* or *distringas* are issued, without any award on the roll to warrant them. 2 *Haw.* 298, 299.

And it seems generally to be taken as an undoubted principle, That a discontinuance by suffering a total chasm in the proceedings, whether on the roll, or in the process, by not giving a fresh continuance instantly upon the determination of the precedent, shall never be aided by any appearance or pleading over: But it is holden by the greater number of authorities, that if the original be good, and the defendant present in court, he shall be compelled to answer to such original, let the process whereon he came in, or the execution of it, be never so erroneous or defective, so that it never were discontinued; for the end of process is to compel an appearance, and the end being served, and a legal charge appearing against the defendant no way discontinued, the law will not so far regard a slip in the process, as to let the defendant out of court, in order only to have him brought in again in better form. 2 *Haw.* 300.

Process stayed by putting in bail.

18. The processes (as well of *capias* as of outlawry) may be stayed by a *supersedeas* issuing from other justices (out of sessions) testifying that the party hath come before them, and hath found sureties for his appearance to answer to the indictment, or to pay his fine. *Dalt. c.* 193.

And it seemeth that even any one justice may bail persons indicted at the sessions, for any offence under the degree of felony; for that the statutes relating specially to the power of justices in granting bail, do not in this case seem to take away the power, which one justice had before the making of the said statutes. 2 *Haw.* 103.

Process of outlawry.

19. Judgment of outlawry is given by the coroner, at the fifth county court, upon the party's not appearing to the *exigent* (which is a writ commanding the sheriff to cause the defendant *(exigi)* to be *demanded* from county court to county court, until he be outlawed). And such judgment is entred thus, *Therefore by the judgment of the coroner of our lord the king of the county aforesaid, he is outlawed.* 2 Haw. 446.

Meaning of the word outlaw.

20. The word *outlaw (utlaghe) utlagatus*, is not from the *latin lex*, but from the *saxon laga*, which signifies *law*. And a person outlawed signifies one that is out of the protection of the king, and out of the aid of the law.

A woman outlawed.

21. And a man which is outlawed is called outlawed, but a woman which is outlawed is called waived, and not *utlagata*; for that women are not sworn in leets or tornes, as men which are of the age of 12 or more are; and therefore men may be called *utlagati*, that is, *extra legem positi*, but women are *waviatæ*,

that is, *derelictæ*, left out or not regarded, because they were not sworn to the law: wherein it is to be noted, that of ancient time a man was not said to be within the law, that was not sworn to the law, which is intended of the oath of allegiance in the leet. 1 *Inst.* 122.

And hence it is, that a man under the age of 12 years, cannot be outlawed. 1 *Inst.* 128.

22. Process of outlawry lies in all indictments of treason or felony, and on all returns of a rescous; and also on all indictments of trespass with force and arms; and it seems probable, that it lies on an indictment of conspiracy, or deceit, or any other crime of a higher nature than a trespass with force and arms; but not on any indictment for a crime of an inferior nature. And it seems agreed, that it lies not on any action on a statute, unless it be given by such statute, either expressly, as in the case of a *præmunire*, or impliedly, as where a recovery is given by an action wherein such process lay before, as on a writ of trespass for a forcible entry, on the 8 *H.* 6. *c.* 9. because the statute expressly gives a recovery by such writ, and such process lies in it by the common law. 2 *Haw.* 302, 303. For what outlawry may be.

23. In every *action personal* wherein any exigent shall be awarded out of any court, one writ of proclamation shall be awarded out of the same court, having day of teste and return as the writ of exigent shall have, directed and delivered of record to the sheriff where the defendant dwells; which writ of proclamation shall contain the effect of the action: And the sheriff shall make one proclamation in the open county court, and another at the general quarter sessions where the defendant dwells, and another a month at least before the *quinto exactus*, by virtue of the said writ of exigent, at or near the most usual door of the church or chapel where the defendant shall be dwelling at the time of the exigent awarded, upon a *Sunday* immediately after divine service. 31 *El.* *c.* 3. Outlawry proclaimed at the sessions.

Also, upon issuing any exigent out of any of the king's courts, against any person for a *criminal* matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same teste and return, where the person in the record of the proceeding is mentioned to inhabit, according to the form of the 31 *El.* *c.* 3. which writ of proclamation shall be delivered to the sheriff 3 months before the return of the same. 4 & 5 *W.* *c.* 22. *s.* 4.

24. If there are two coroners in a county, or more, one may execute the writ, as in case of an exigent, but the return must be in the name of the coroners. 2 *H. H.* 56. Return of the outlawry.

And the return of the outlawry must be certain: It must shew where the county court was held, and in what county; and must return the day, and year of the king to every *Exactus*. 2 *H. H.* 203.

And also the sheriff's name and office must be subscribed to the return of the exigent. 2 *H. H.* 204.

25. It is said, that the justices in sessions cannot issue a *capias utlagatum*, but must return the record of the outlawry into the Capias utlagatum.

king's bench, and there process of *capias utlagatum* shall issue. 2 *H. H.* 52.

But in *T.* 10 *J.* The opinion of all the court of common pleas was, that if one be outlawed before the justices of the peace on an indictment of felony, they may award a *capias utlagatum*; and so was the opinion of *Periam* chief baron, and all the court of the exchequer: for they that have power to award process of outlawry, have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction. 12 *Co.* 103.

Consequences of outlawry:

26. If a person be outlawed at the suit of one man, all men shall take advantage of this personal disability. 1 *Inst.* 128.

But such disability abateth not the writ, but only disableth the plaintiff, until he obtain a charter of pardon. 1 *Inst.* 128.

For treason, or felony.

27. Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. 2 *Haw.* 446.

For an inferior offence.

28. But the outlawry for a misdemeanor, doth not inure as a conviction for the offence, as it doth in cases of treason and felony; but as a conviction of the contempt for not answering, which contempt is therefore punished, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. *K.* and *Tippin*, 1 *W.* 2 *Salk.* 494.

Goods forfeited from the time of issuing the exigent.

29. The very issuing of the exigent, in case of treason or felony, gives to the king the forfeiture of the goods of the party, from the time of the teste of the writ of exigent: and the forfeiture by the exigent awarded stands, altho' the indictment be quashed, until there be a judgment of reversal on a writ of error; because the king's title being of record, must be avoided by a record. 2 *H. H.* 204, 205.

Lands forfeited from the time of the outlawry.

30. And as the award of the exigent gives the forfeiture of the goods, so the outlaway gives the forfeiture or loss of the lands of the party outlawed, to wit, in case of outlawry of treason his lands are forfeited to the king, of whomsoever they are held; and in case of outlawry of felony, to the lord by escheat, of whom they are immediately holden. 2 *H. H.* 206.

But the outlawry must be first returned.

31. But it must be remembred, that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any escheat; but it must be returned by the sheriff, with the writ of *exigi facias*, and the return indorsed. 2 *H. H.* 206. Or else it must be removed by *certiorari*: for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. 1 *Inst.* 288.

And after inquisition found.

32. And by the outlawry all *personal* chattels are vested in the king by forfeiture; but *real* chattels, or freehold estates are not vested in the king, till after inquisition found. 3 *Salk.* 262.

Whether it is lawful to kill an outlaw.

33. In ancient times no man could have been outlawed but for felony, the punishment whereof was death; and upon this account, an outlawed man was called *woolfshead*, because he might be put to death by any man, as a wolf that hateful beast might. But in the beginning of the reign of K. *Ed.* 3. it was resolved by

by the judges, for avoiding of inhumanity, and of effusion of christian blood, that it should not be lawful for any man but the sheriff, having lawful warrant, to put to death any man outlawed, tho' it were for felony; and if he did, he should undergo such pain of death, as if he had killed any other man: and so the law continueth to this day. 1 *Inst.* 28.

34. If a man be indicted before justices of the peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaol delivery may award execution of this prisoner; for they are constituted to deliver the gaol. 4 *Inst.* 169. *Hale's Pl.* 158. 2 *H. H.* 35.

Judges of assize may award execution of persons outlawed before justices of the peace.

35. Where clergy is allowable, it shall be as much allowed to one who is outlawed, as to one who is convicted by verdict or confession. 2 *Haw.* 343.

Clergy in cases of outlawry.

But a statute taking the benefit of clergy from those who shall be found guilty, doth not thereby take it from those who are outlawed. 2 *Haw.* 343.

But by the 3 & 4 W. c. 9. s. 2. *If any person be indicted of any offence, for which, by any former statute, he is excluded from clergy, upon conviction; if he shall be outlawed thereupon, he shall not have his clergy.*

By any former statute] Hereby it appears, that this extends not to offences made felonies by statutes subsequent to this statute. 2 *Haw.* 348.

36. Where a person is outlawed, the defendant may shew all the matter and outlawry returned of record, and demand judgment if he shall be answered, because he is out of the law, to sue an action during the time that he is outlawed. 1 *Inst.* 128.

Person outlawed cannot be plaintiff.

37. It seems to be a good challenge of a juror, that he is outlawed, either for a criminal matter, or as some say, in a personal action; but not a principal challenge, but only to the favour, unless the record of the outlawry be produced. 2 *Haw.* 215, 417.

Cannot be a juror.

38. But it seems clear, that outlawry in a *personal* action is not a good exception against a witness, as it is against a juror. 2 *Haw.* 443.

May be a witness.

39. An outlawed person may make a will, and have executors or administrators. *Cro. El.* 575.

May make a will.

And an executor may reverse the outlawry of the testator, where he was not lawfully outlawed. 1 *Leon.* 325.

40. Outlawry may be reversed several ways; as by procuring a *supersedeas* and delivering it to the sheriff before the *quinto exactus*, or by shewing any matter apparent on record which makes the outlawry erroneous, as the want of an original, or the omission of process, or want of form in a writ of proclamation, or a return by a person appearing not to be sheriff, or a variance between the original and exigent or other process, or by a misnomer, or want of addition. 2 *Haw.* c. 50.

Reversing outlawry.

41. And upon a writ of error upon an outlawry in felony, the party outlawed must render himself in custody, and pray the allowance of the writ of error in person: and if the outlawry be reversed, he shall be put to answer the indictment. 2 *H. H.* 209.

In what case the party must appear personally to reverse it.

But by the 4 & 5 *W. c.* 18. one outlawed, except for treason or felony, need not appear in person to reverse an outlawry, but by attorney. 2 *Salk.* 496.

Other kinds of process.

42. There is another kind of process out of a court of record, against offenders, called *attachment*, which is generally for contempt; which belongs to title Attachment.

The process against *jurors*, may be seen in the title Jury.

And the process against *witnesses*, in title Evidence.

Forms of process; and first of a *Venire*.

GEORGE *the second, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth. To the sheriff of the county of* Westmorland, *greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you cause* A. O. *of* ——— *in your said county, yeoman, to come before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at* ——— *in your said county, on the* ——— *day of* ——— *next ensuing, to answer unto us upon certain articles presented against him the said* A. O. *And have you there then this precept. Witness* J. P. *and* K. P. *at* ——— *the* ——— *day of* ——— *in the* ——— *year of our reign.*

And upon this *Venire*, if the defendant be returned sufficient, and maketh default, then a *Distringas* shall be awarded, and so the same process infinite, until he come in: But if a *nihil habet* be returned at the first, then after the *Venire*, there shall go out a *Capias*, *Alias*, *Pluries*, and *Exigent*. *Dalt. Sher.* 160.

Form of a *Distringas*.

GEORGE *the second, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth. To the sheriff of the county of* ——— *greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and* distrain A. O. *of* ——— *in your county, yeoman, by all his lands and tenements* &c. *and that you answer for the issues thereof* &c. *and that you have his body before our justices assigned* [and so on, as before in the *Venire*.]

But if a *nihil* (as hath been said) be returned at the first upon the *Venire facias*; then a *Capias* shall issue, thus:

GEORGE *the second, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth: To the sheriff of the county of* ——— *greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and* take A. O. *of* ——— *in your county, yeoman, if he shall be found in your bailiwick, and him cause to be safely kept; so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at* ——— *in your county,*

on the ——— *day of* ——— *next ensuing, to answer unto us concerning divers trespasses, contempts, and offences, of which he is indicted. And have you there then this writ. Witness* J. P. *and* K. P. *at* ——— *the* ——— *day of* ——— *in the* ——— *year of our reign.*

At which day A. S. *knight, sheriff of the county aforesaid, returned that he is not found in his bailiwick, and he did not come. Therefore it is commanded as before.*

Note; The cause why the entry is made, *and he did not come*, is, because the party may appear voluntarily, and so avoid the attachment or arresting of his body.

The *Alias Capias.*

GEORGE ——— *To the sheriff* ——— *We command you, as we before commanded you, that you omit not* ——— (as before.)

At which day ——— (as before); *and he did not come. Therefore it is commanded to the sheriff, as it hath been often commanded,* &c.

The *Pluries Capias.*

GEORGE *&c. To the sheriff &c. We command you, as we have often commanded you, that you omit not* (as before.)

At which day A. S. *knight, the sheriff aforesaid, returned, that the aforesaid* A. O. *is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cause to be demanded &c.*

The *Exigent.*

GEORGE *&c. To the sheriff &c. greeting. We command you, that you cause* A. O. *of* ——— *in your county, yeoman, to be* demanded, *until, by the law and custom of our kingdom of* England, *he be outlawed, if he shall not appear; and if he shall appear, that then you take him, and cause him to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in your said county committed, at the general quarter sessions of the peace of your county next after the feast of* ——— *next ensuing to be held, wheresoever in the same county it shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences, of which he is indicted. And have you there then this writ. Witness Sir* J. P. *baronet at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of our reign.*

At which day A. S. *knight, sheriff of the county aforesaid, returned, that at the county holden at* ——— *the* ——— *day of* ——— *in the* ——— *year of the reign of our lord the king that now is, and so at four other counties then next following, there holden, the aforesaid* A. O. *was demanded, and did not appear. Therefore by the judgment of the coroner of our said lord the king, in the county aforesaid, he was outlawed.*

The *Capias Utlagatum.*

GEORGE *&c. To the sheriff &c. greeting. We command you, that you omit not, by reason of any liberty in your county, but that you take* A. O. *late of* ——— *in your county, labourer, if he shall be found within your county, and him cause safely to be kept, so that you have his body before the keepers of our peace and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors in your county committed, at* ——— *the* ——— *day of* ——— *to stand right in our court before our justices aforesaid, upon a certain outlawry against him the said* A. O. *promulged, at our suit, for certain felonies* (or *trespasses*) *whereof he was convicted the* ——— *day of* ——— *And have you then there this writ. Witness &c.*

Profaneness. See Blasphemy.

Prophecies.

IF any person shall advisedly and directly advance, publish, and set forth by writing, printing, singing, or any other open speech or deed, any fond, fantastical, or false prophecy, upon or by the occasion of any arms, fields, beasts, badges, or such other like things accustomed in arms, cognizances, or signets, or upon or by reason of any time, year, or day, name, bloodshed, or war, to the intent thereby to make any rebellion, insurrection, dissention, loss of life, or other disturbance in the realm; and shall be convicted thereof before a judge of assize, or justice of the peace, within six months after the offence committed, he shall for the first offence be imprisoned for a year, and forfeit 10 *l.* and for the second offence, shall be imprisoned for life, and forfeit his goods: half the forfeitures to the king, and half to him who shall sue for them in any court of record. 5 *El. c.* 15.

Mr. *Barlow* thinks that the carrying of white roses on the tenth of *June*, comes within the purview of this statute.

Protestant dissenters. See Dissenters.

Publick worship.

Impugners of the rites of the church.

1. IMpugners of the book of common prayer, of the 39 articles, of the rites and ceremonies of the church of *England*, of the episcopal government of the church, or of the form of ordering and consecrating archbishops and bishops, shall be *ipso facto*

facto excommunicated, and not restored but upon repentance, and publick recantation. *Can.* 4, 5, 6, 7, 8.

Speaking irreverently of the sacrament.

2. If any person shall speak unreverently of the sacrament of the lord's supper, he shall suffer imprisonment, and make fine and ransom at the king's will. And three justices (1 Q.) may take information by the oaths of two witnesses; and afterwards, at the sessions, may inquire thereof by the oaths of 12 men upon indictment. And they shall, at the sessions where the offender shall be indicted, direct a writ to the bishop to appear by himself or deputy at the trial. But no person shall be molested, but within three months after the offence committed. 1 *Ed.* 6. *c.* 1.

Penalty of 12 d. a Sunday for not resorting to church.

3. All persons, having no lawful or reasonable excuse to be absent, shall resort to their parish church or chapel, or upon reasonable let thereof, to some usual place where divine service shall be performed, according to the liturgy and practice of the church of *England*, upon every *Sunday* and holiday; on pain of punishment by the censures of the church, or of forfeiting 1 *s.* for every offence to the poor, to be levied by the churchwardens by distress. 1 *El. c.* 2. *s.* 14, 24. Except dissenters qualified by the act of toleration. 1 *W. c.* 18.

And he who is absent from his own parish church, shall be put to prove where he went to church. 1 *Haw.* 13.

And any justice of the peace, on proof unto him made (in one month after default in coming to church on *Sundays*) by confession, or oath of witness, may call the party before him; and if he shall not make a sufficient excuse, and due proof thereof, to the justice's satisfaction, such justice may give warrant to the churchwarden to levy 12 *d.* to the use of the poor, by distress. For want of distress, commitment till paid. 3 *J. c.* 4. *s.* 27, 28.

Penalty of 20 l. a month, for not resorting to church.

4. Every person above the age of 16 years, who shall not repair to some church, chapel, or usual place of common prayer, being convicted thereof before the judges of assize, or justices in sessions, shall forfeit 20 *l.* a month, one third to the king, one third to the maintenance of the poor of the parish, and of the houses of correction, and of impotent and maimed soldiers, as the lord treasurer, chancellor, and chief baron of the exchequer shall order, and one third to him who shall sue in any court of record. If not paid in 3 months after judgment, he shall be imprisoned till he pay, or conform himself to go to church. 23 *El. c.* 1. *s.* 5, 8, 11. 29 *El. c.* 6. *s.* 7.

And this penalty of 20 *l.* a month dispenseth not with the forfeiture of 12 *d.* a *Sunday*; for both may well stand together; and the 12 *d.* is immediately forfeited upon the absence of each particular day. 1 *Haw.* 13.

And every offender in not repairing to divine service, having being once convicted (and not conforming) shall pay 20 *l.* a month into the exchequer, in the term of *Easter* or *Michaelmas* which shall be next after such conviction; and also shall, without any other indictment or conviction, for every month after such conviction, so long as he shall not conform, pay into the exchequer in every *Easter* and *Michaelmas* term, as much as shall then remain unpaid, after such rate of 20 *l.* a month: And if default shall be made

made in any part of ſuch payment, the king may by proceſs out of the exchequer, ſeize all the goods, and two parts of the land, of ſuch offender. 29 *El. c.* 6. *ſ.* 3, 4, 5, 6. 3 *J. c.* 4. *ſ.* 8, 9.

Or the king may refuſe the 20*l.* a month, tho' it be duly tendred, and ſeize two parts of the lands at his option. 3 *J. c.* 4. *ſ.* 11.

But copyhold lands are not within theſe ſtatutes, in reſpect of the prejudice which would accrue to the lord, by the loſs of his ſervices. 1 *Haw.* 14.

And every perſon who ſhall uſually on *Sundays* have in his houſe divine ſervice as eſtabliſhed by law, and be thereat himſelf uſually preſent, and ſhall four times a year go to the pariſh church or other common church or chapel, ſhall not incur any penalty for not repairing to church. 23 *El. c.* 1. *ſ.* 12.

And this alſo ſhall not extend to qualified proteſtant diſſenters. 1 *W. c.* 18.

Penalty for harbouring a recuſant.

5. Every perſon who ſhall retain in his ſervice, or ſhall relieve, keep, or harbour in his houſe any ſervant, ſojourner, or ſtranger who ſhall not repair to church, but ſhall forbear for a month together, not having reaſonable excuſe, ſhall forfeit 10*l* for every month he ſhall continue in his houſe ſuch perſon ſo forbearing. And the juſtices in ſeſſions may determine the ſame. 3 *J. c.* 4. *ſ.* 32, 33, 36.

Recuſant diſabled as to offices.

6. No recuſant convict ſhall practiſe law or phyſick, nor ſhall be judge or miniſter of any court, or bear any military office by land or ſea; and ſhall forfeit for every offence 100*l.* And ſhall alſo be diſabled to be executor, adminiſtrator, or guardian. 3 *J. c.* 5. *ſ.* 8, 22.

Recuſant conforming.

7. A recuſant conforming himſelf ſhall be diſcharged of all penalties, which he might otherwiſe ſuſtain by reaſon of his recuſancy. 1 *J. c.* 4. *ſ.* 2.

Publick worſhip in the navy.

8. All commanders, captains, and officers at ſea, ſhall cauſe the publick worſhip of almighty god, according to the liturgy of the church of *England*, to be performed in their reſpective ſhips: And prayers and preachings by the chaplains ſhall be performed diligently. 22 *G.* 2. *c.* 33. *art.* 1.

Qualification of lecturers.

9. No perſon ſhall be received as a lecturer, or allowed to preach or read any lecture or ſermon, without licence from the biſhop, and aſſenting to the 39 articles, and reading the common prayer before his firſt ſermon, and on the firſt lecture day of every month; on pain of three months impriſonment, for every offence, by two juſtices of the peace on certificate from the biſhop of the offence committed. 13 & 14 *C.* 2. *c.* 4. *ſ.* 19, 20, 21.

Diſturbers of publick worſhip.

10. By the 1 *Mar. ſeſſ.* 2. *c.* 3. If any perſon ſhall diſturb a *preacher in his ſermon* by word or deed, he ſhall be apprehended and carried before a juſtice of the peace, who ſhall commit him to ſafe cuſtody, and within ſix days, he and another juſtice ſhall examine the fact, and if they find him guilty by two witneſſes, or confeſſion, they ſhall commit him to gaol for three months, and further to the next ſeſſions; and if at the ſeſſions he repents, and is reconciled, he ſhall be diſcharged on finding ſureties for his good behaviour for a year; if not, he ſhall be continued in gaol till he

does,

does; saving the ecclesiastical jurisdiction; and he shall not be punished both ways.

And this statute, tho' made in queen *Mary*'s reign, extendeth to the divine service now established. *Cod.* 372.

And by the 1 *W. c.* 18. *s.* 18. If any person shall willingly and of purpose, come into any church, chapel, or *other congregation permitted by the act of toleration*, and disquiet or disturb the same, or misuse any preacher or teacher; he shall, on proof thereof before one justice, by two witnesses, find two sureties to be bound by recognizance in 50 *l.* and in default thereof shall be committed till the next sessions, and on conviction there of the said offence, he shall forfeit to the king 20 *l.*

But it shall be lawful for all men, as well in churches, chapels, oratories, as other places, to use openly any psalms or prayer taken out of the bible, at any due time, not letting or omitting thereby the service. 2 & 3 *Ed.* 6. *c.* 1. *s.* 7.

And the court of king's bench refused to grant a *certiorari*, to remove an indictment at the sessions, for a person not behaving himself modestly and reverently at the church, during divine service; which altho' punishable by ecclesiastical censures, yet the court conceived it a proper cause within cognizance of the justices of the peace. 1 *Keb.* 491. And this was before the abovementioned statute of the 1 *W. c.* 18.

11. No clergyman shall be arrested in any church or churchyard, whilst he attends to divine service; on pain of the imprisonment of the offender, and ransom at the king's will, and gree to the party arrested. 50 *Ed.* 3. *c.* 5. 1 *R.* 2. *c.* 15. Arresting a clergyman attending divine service.

But the arrest notwithstanding, if not on a *Sunday*, is good in law. *Watson* 636.

Purveyors.

1. ANciently the king's court was supplied with necessaries from the ancient demesnes of the crown; and in respect thereof, the tenants of those lands had many privileges, which they still enjoy: But this method being found to be troublesome and inconvenient, was by degrees disused; and afterwards the king was wont to appoint certain officers to buy-in provisions for his houshold, who were called purveyors, and claimed many privileges by the prerogative of the crown. 2 *Inst.* 542. 1 *Haw.* 114. Abuses of purveyors.

2. The several laws which restrained the exorbitancies of these purveyors, make up a pretty large title in the old books; but these laws proving ineffectual to remedy the evil complained of, at length by the statute of the 12 *C.* 2. *c.* 24. purveyance was intirely taken away: By which it is enacted, that no sum of money, or other thing, shall be taken for any provision, carriages, or purveyance for the king: Purveyance taken away.

And

And that no perſon, under colour of purveyance, ſhall take any timber, fuel, cattle, corn, grain, malt, hay, ſtraw, victual, cart, carriage, or other thing, without conſent of the owner; nor ſhall require any to furniſh any horſes, oxen, or other cattle, carts, ploughs, wains, or other carriages, for the uſe of the king, or his houſhold, without the owner's conſent:

On pain of being committed to gaol, by a juſtice of the peace and the conſtable, until the next ſeſſions, to be there indicted; and alſo of paying to the party treble damages, and treble coſts, on an action at law.

Quakers.

SO far as quakers are concerned in the act of toleration, amongſt other proteſtant diſſenters, ſee title Diſſenters.

For quakers tithes, ſee title Tithes.

For quakers oaths, ſee title Oaths.

Quarentine. See Plague.

Rape.

I. What it is.
II. Evidence on an indictment of rape.
III. Puniſhment of rape.
IV. Principal and acceſſary.

I. What it is.

Rape, what.

1. RAPE is, when a man hath carnal knowledge of a woman, by force, and againſt her will. 2 *Inſt.* 180. 1 *Haw.* 108.

Child under 10.

2. Alſo, if any perſon ſhall unlawfully and carnally know, and abuſe any woman child, under the age of ten years, whether with her conſent or againſt it, he ſhall be guilty of felony without benefit of clergy. 18 *El. c.* 7.

Conſenting at laſt.

3. The offence of rape is no way mitigated, by ſhewing that the woman at laſt yielded to the violence, if ſuch her conſent was forced by fear of death, or of dureſs. 1 *Haw.* 108.

Raviſhing a common ſtrumpet.

4. Alſo, it is not a ſufficient excuſe in the raviſher, to prove, that the woman is a common ſtrumpet; for ſhe is ſtill under the protection of the law, and may not be forced. 1 *Haw.* 108.

5. Nor

5. Nor is it any excuſe, that ſhe conſented after the fact. 1 *Haw.* 108. Conſenting after the fact.

And by the 6 *R.* 2. *c.* 6. When any woman is raviſhed, and afterwards doth conſent to the raviſher; they ſhall both of them be diſabled to have any inheritance, dower, or joint feoffment, but the next of blood ſhall enter. And the next of kin to the woman raviſhed may have an appeal againſt the raviſher, notwithſtanding ſuch conſent; and the defendant ſhall not be received to wage battel.

6. It is ſaid by Mr. *Dalton*, that if a woman at the time of the ſuppoſed rape do conceive with child by the raviſher, this is no rape; for (he ſays) a woman cannot conceive except ſhe doth conſent. And this he hath from *Stamford*, and *Britton*, and *Finch*. *Dalt. c.* 160. Woman raviſhed conceiving.

But Mr. *Hawkins* obſerves, that this opinion ſeems very queſtionable; not only becauſe the previous violence is no way extenuated by ſuch a ſubſequent conſent; but alſo, becauſe if it were neceſſary to ſhew, that the woman did not conceive, the offender could not be tried till ſuch time as it might appear whether ſhe did or not; and likewiſe becauſe the philoſophy of this notion may be very well doubted of. 1 *Haw.* 108.

And L. *Hale* ſays, this opinion in *Dalton* ſeems to be no law. 1 *H. H.* 731.

II. Evidence on an indictment of rape.

1. The party raviſhed may give evidence on oath, and is in law a competent witneſs; but the credibility of her teſtimony, and how far forth ſhe is to be believed, muſt be left to the jury, and is more or leſs credible according to the circumſtances of fact that concur in that teſtimony. 1 *H. H.* 633. The woman's oath.

2. For inſtance, if the witneſs be of good fame; if ſhe preſently diſcovered the offence, and made purſuit after the offender; ſhewed circumſtances and ſigns of the injury, whereof many are of that nature, that only women are the moſt proper examiners and inſpectors; if the place, wherein the fact was done, was remote from people, inhabitants, or paſſengers; if the offender fled for it: theſe, and the like, are concurring evidences to give greater probability to her teſtimony, when proved by others as well as her ſelf. 1 *H. H.* 633. Circumſtances in favour of it.

3. But on the other ſide, if ſhe concealed the injury for any conſiderable time, after ſhe had opportunity to complain; if the place, where the fact was ſuppoſed to be committed, were near to inhabitants or common recourſe or paſſage of paſſengers, and ſhe made no outcry when the fact was ſuppoſed to be done, when and where it is probable ſhe might be heard by others; or if a man prove himſelf to be in another place, or in other company, at the time ſhe charges him with the fact; or if ſhe is wrong in the deſcription of the place, or ſwears the fact to be done in a place where it was impoſſible the man could have acceſs to her at that time, as if the room was locked up, and the key in the cuſtody of another perſon: theſe and the like circumſtances carry a Circumſtances in diſfavour of it.

ſtrong

ſtrong preſumption, that her teſtimony is falſe or feigned. 1 *H. H.* 633. *Read. Rape.*

Caution.

4. Upon the whole; rape, it is true, is a moſt deteſtable crime, and therefore ought ſeverely and impartially to be puniſhed with death: but it muſt be remembred, that it is an accuſation eaſily to be made, and hard to be proved, and harder to be defended by the party accuſed, tho' never ſo innocent: Therefore a wiſe jury will be cautious upon trials of offences of this nature, that they be not ſo much tranſported with indignation at the heinouſneſs of the offence, as to be over haſtily carried to the conviction of the perſon accuſed thereof, by the confident teſtimony, ſometimes of malicious and falſe witneſſes. 1 *H. H.* 635, 636.

III. Puniſhment of rape.

Felony without benefit of clergy.

1. Of old time rape was felony, for which the offender was to ſuffer death: afterwards the offence was made leſſer, and the puniſhment changed from death to the loſs of thoſe members whereby he offended; that is to ſay, it was changed to caſtration and loſs of his eyes, unleſs ſhe that was raviſhed, before judgment, demanded him for her huſband. 2 *Inſt.* 180.

Then, by the ſtatute of the 3 *Ed.* 1. *c.* 13. it was made a treſpaſs, ſubjecting the offender to two years impriſonment, and a fine at the king's will; and it was again made felony by the 13 *Ed.* 1. *c.* 34. and at laſt by the 18 *El. c.* 7. was excluded from the benefit of clergy.

Pardon.

2. And no charter of pardon ſhall be allowed for rape, unleſs the rape be ſpecified therein. 13 *R.* 2. *ſt.* 2. *c.* 1.

And all rapes are excepted out of the general pardon, of the 20 *G.* 2. *c.* 52.

IV. Principal and acceſſary.

Perſons preſent and aiding, are principals.

1. Mr. *Hawkins* ſays, all who are preſent, and actually aſſiſt a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 1 *Haw.* 108.

And ſo, one woman may be a principal to the raviſhment of another.

Not preſent, acceſſaries.

2. And L. *Hale* ſays, that by the 18 *El. c.* 7. the principals in rape are ouſted of clergy, whether they be principals in the firſt degree, to wit, he that committed the fact; or principals in the ſecond degree, to wit, preſent, aiding, and abetting: but acceſſaries, before and after, have their clergy. 1 *H. H.* 633.

Recognizance.

1. A Recognizance is a bond of record, teſtifying the recognizor to owe a certain ſum of money to ſome other; and the acknowledging of the ſame is to remain of record; and none can take it but only a judge or officer of record. *Dalt. c.* 168. What it is.

2. And theſe recognizances, in ſome caſes the juſtices of the peace are enabled to take by the expreſs words of certain ſtatutes: But in other caſes (as for the peace, and good behaviour, and the like) it is rather in congruity, and by reaſonable intendment of law, than by any expreſs authority given them, either by their commiſſion, or by the ſtatute law. *Crom.* 125. *Dalt. c.* 168. In what caſes it may be taken.

But wherefoever any ſtatute giveth them power to take a bond of any man, or to bind over any man to appear at the aſſizes or ſeſſions, or to take ſureties for any matter or cauſe, they may take a recognizance. Yea, wherefoever they have authority given them to cauſe a man to do a thing, there it ſeemeth they have in congruity power given them to bind the party by recognizance to do it: and if the party ſhall refuſe to be bound, the juſtice may ſend him to gaol. *Dalt. c.* 168.

But he can take no recognizance but only of ſuch matters as concern his office: and if he doth, it ſeemeth to be void. *Dalt. c.* 168.

3. Every obligation and recognizance, taken by juſtices of the peace, muſt be made to *our lord the king*; on pain of impriſonment of any perſon that ſhall take it otherwiſe. *Dalt. c.* 168. The form of it.

It muſt alſo contain the name, place of abode, and trade or calling, both of principal and ſureties, and the ſums in which they are bound. *Barl. Recog.*

And it is moſt commonly ſubject to a *condition*, which is either indorſed, or underwritten, or contained within the body of it; upon the performance of which the recognizance ſhall be void. *id.*

4. When the parties are to enter into recognizance, call them by their names thus: "You *A. B.* acknowledge to owe to our ſo-"vereign lord the king, the ſum of —— And you *C. D.* acknow-"ledge to owe to our ſovereign lord the king, the ſum of —— "To be levied of your reſpective goods and chattels, lands and "tenements, for the uſe of our ſaid lord the king, his heirs and "ſucceſſors, if default ſhall be made in the condition following; "That is to ſay, if you the ſaid *A. B.* ſhall make default in ap-"pearing *&c.*" But the parties need not to ſign it. *id.* Manner of taking it.

And it is uſual for the juſtices to mark at the foot of the examination, *A. B.* in 40 *l.* to appear *&c.* And from ſuch ſhort note to make out a record afterwards. *id.*

Yet the recognizance is a matter of record preſently, ſo ſoon as it is taken and acknowledged, altho' it be not made up. *Dalt. c.* 168.

Lord

Lord *Coke* (1 *Inſt.* 260.) ſays, that a record is a memorial or remembrance in rolls of *parchment* &c. From whence it ſeemeth that a recognizance ought to be ingroſſed on parchment, perhaps for this reaſon, becauſe parchment is more durable than paper; but ſince there is no law which prohibits it to be ingroſſed on paper, it ſeemeth that if it ſhall be on paper only, and not on parchment, it is good in law.

And when it is made up, if the juſtice ſhall only ſubſcribe his name, without his ſeal to it, this is well enough; and that may be in either of theſe ſorts, *Acknowledged before me* J. P. or only to ſubſcribe his name thus, *J. P.* Dalt. c. 176.

How to be certified.

5. The juſtices ſhall certify their recognizances for keeping the peace, to the next ſeſſions, that the party may be called; and if he make default, the default ſhall be recorded, and the recognizance, with the record of the default, ſhall be ſent and certified into the chancery, king's bench, or exchequer. 3 *H.* 7. *c.* 1.

But in caſes of felony, the recognizances are to be certified to the general gaol delivery. 1 *&* 2 *P. & M. c.* 13.

The *conditions* of recognizances, in all the variety of caſes, are interſperſed under their proper titles.

Recognizance with ſureties.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* ——— *in the county aforeſaid, yeoman, and* A. S. *of* ——— *in the county aforeſaid, taylor, and* B. S. *of* ——— *in the county aforeſaid, labourer, perſonally came before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged themſelves to owe to our ſaid lord the king; that is to ſay, the ſaid* A. O. *the ſum of* 20 l. *and the ſaid* A. S. *and* B. S. *each the ſum of* 10 l. *ſeparately, of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements reſpectively, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if the ſaid* A. O. *ſhall make default in the condition hereon indorſed* [or, *here under written*].

Acknowledged before me
J. P.

Recognizance without ſureties.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* ——— *in the ſaid county, yeoman, perſonally came before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged himſelf to owe to our ſaid lord the king,*

king, 10 l. *of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. O. *shall fail in the condition underwritten* [or, *indorsed*].

J. P.

The Condition of the abovewritten [or, *within written*] *recognizance is such, that if the abovebound* A. O. *shall* ——— *Then the said recognizance to be void, or else remain in its force.*

Recusants. See Popery, and Publick worship.

Regrater. See Forestaller.

Release. See Surety.

Rent. See Distress.

Rescue.

1. RESCOUS is an ancient *French* word, coming from *rescourrer*, that is, *recuperare*, to recover; and signifies a forcible setting at liberty against law, a person arrested by the process or course of law. 1 *Inst.* 160. What is a rescous.

It seems that it is necessary, that the rescuer should have knowledge that the person is under arrest for a criminal offence, if he be in the custody of a private person; but if he be in the custody of an officer, there at his peril he is to take notice of it. 2 *H. H.* 606.

But it is said, that to rescue a felon taken on a general warrant, to answer what shall be objected against him, no cause being expressed in the warrant, is not felony. 1 *H. H.* 578.

Nor unless a felony hath been really done. *Hale's Pl.* 116.

2. Altho' a *prison breaker* may be arraigned for that offence, before he be arraigned of the crime for which he was imprisoned; yet he, who *rescues* one imprisoned for felony, cannot, according to the better opinion, be arraigned for such offence as for a felony, till the principal offender be attainted; but he may be immediately proceeded against for a misprision, if the king pleases. 2 *Haw.* 140. When it shall be tried.

And therefore if the principal die before the attainder, he shall be fined and imprisoned. *Hale's Pl.* 116.

Also if the principal be found not guilty, or guilty of a crime not capital, the rescuer ought to be discharged of felony, but he may be fined for the misdemeanor. 1 *H. H.* 598, 599.

3. An indictment of *rescous*, must set forth the nature and cause of the imprisonment, and the special circumstances of the fact in question. 2 *Haw.* 140. Indictment.

 4. A hin-

Punishment. 4. A hindrance of a person to be arrested, that has committed felony, is a misdemeanor, but no felony: But if the party be arrested, and then rescued, if the arrest was for felony, the rescuer is a felon; if for treason, a traytor; if for trespass, fineable. *Hale's Pl.* 116. 2 *Haw.* 140.

There are also special penalties enacted for rescuing offenders against particular statutes, which belong not to this general title.

Clergy. 5. Altho' the felony for which a man is arrested, be not within clergy; yet the rescuing him is within clergy. 1 *H. H.* 599, 607.

Outlawry. 6. Upon the return of a *rescous*, process of outlawry shall issue. 2 *Haw.* 302.

Indictment for a rescue.

THE *jurors for our lord the king upon their oath present. that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, did make, direct, and deliver a warrant or precept in writing, to* A. C. *of* ——— *in the said county, yeoman, constable of the town of* ——— *aforesaid in the county aforesaid; by which said warrant he the said* A. C. *the constable aforesaid, was commanded to take the body of* A. O. *late of* ——— *yeoman, and bring and have him the said* A. O. *before the said* J. P. *to be examined by him the said* J. P. *concerning an assault said to have been committed by him the said* A. O. *upon* A. I. *of* ——— *yeoman: Which said* A. C. *the constable aforesaid, afterwards, that is to say, on the* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, by virtue of the said warrant, did take and arrest him the said* A. O. *for the cause aforesaid, and him the said* A. O. *in his custody by virtue of the said warrant then and there had: And that the said* A. O. *late of* ——— *aforesaid, in the county aforesaid, yeoman, and* B. O. *late of the same, yeoman, well knowing the said* A. O. *so to be arrested as aforesaid, afterwards, to wit, on the said* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, with force and arms, in and upon the said* A. C. *the constable aforesaid, then and there being in the peace of god and of our said lord the king, and in the execution of his said office then and there being, did make an assault, and him the said* A. C. *then and there did beat, wound, and ill treat; and that the said* B. O. *him the said* A. O. *out of the custody of the said* A. C. *and against the will of the said* A. C. *then and there with force and arms unlawfully did rescue and put him at large to go where he would; and that the said* A. O. *himself out of the custody of the said* A. C. *and against the will of the said* A. C. *then and there with force and arms, unlawfully did rescue, and escape at large, where he would go; in contempt*

of our said lord the king and his laws, to the great damage of the said A. C. *to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

Restitution of stolen goods.

THERE are three means of restitution of goods, for the party from whom they were stolen; 1. By appeal of robbery or larceny. 2. By the statute of the 21 *H.* 8. *c.* 11. And, 3. By course of the common law. 1 *H. H.* 538.

1. *Upon an appeal of robbery or larceny.* If the party were convict thereupon, restitution of the goods contained in the appeal, was to be made to the appellant; for it is one of the ends of that suit. 1 *H. H* 538. Restitution upon an appeal.

And hence it is, that if in an appeal of felony or robbery, the appellant omit any of the goods stolen from him, they are forfeit and confiscate to the king. 1 *H. H.* 538.

And this appeal must be upon fresh suit; and tho' anciently the law was strict herein, as to the time and manner of the pursuit and apprehending of the felon, yet the law is now more liberal. 1 *H. H.* 540.

For if the felon be taken by any others, as by the sheriff, yet if the party robbed come within a year after, and give notice of the felony, and enter his appeal, this is a fresh suit, if he used his diligence shortly after the felony to have taken him. 1 *H. H.* 540.

If a felon waive the goods stolen, without any pursuit after him, those goods are not in law waived, nor forfeit to the king or lord of a franchise; but if he waive them upon a pursuit of him, then they are waived in law, and forfeit to the king or lord of the liberty. 1 *H. H.* 541.

And this forfeiture is not like a stray, where tho' the lord may seize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot seize his own goods, tho' upon fresh suit within the year and day. 1 *H. H.* 541.

But yet this is not an absolute loss of the owner's goods, but rather an expedient, settled by law, to drive the owner to convict the felon by prosecuting his appeal; and therefore if he make fresh suit, and prosecute his appeal, and the felon be thereupon convict or attaint, and the fresh suit be inquired and found, by verdict or inquest of office, he shall have restitution of the goods so waived. 1 *H. H.* 541.

2. *By the statute of* 21 *H.* 8. *c.* 11. Which statute introduced a new law for restitution; for before this statute there was no restitution upon an indictment, but only upon an appeal: Which said statute enacteth as follows; Restitution by the statute of 21 H. 8.

If any felon do rob or take away any man's money or goods, and thereof be indicted, and arraigned, and found guilty, or otherwise attainted, by reason of evidence given by the party robbed, or owner of the money or goods, or by any other by their procurement; then the party robbed, or owner of the goods, shall be restored to such his money or goods: and as well the justices of gaol delivery, as other justices before whom the felon shall be found guilty, or otherwise attainted, may award a writ of restitution, in like manner as if the felon were attainted on appeal.

Found guilty or otherwise attainted] By this it seems questionable, whether the party be intitled to restitution, upon the defendant's standing mute; in which case he is neither found guilty, nor otherwise attainted. 2 *Haw.* 332.

Or otherwise attainted] If the owner prefers a bill of indictment, which is found, and the felon flies, and is outlawed, the owner shall have restitution; for he gave evidence upon the indictment, which tho' it be not a conviction, is the ground of the outlawry, which is an attainder. 1 *H. H.* 545.

The party robbed, or owner] Therefore if the servant be robbed of the master's money, or his servant by his procurement, give evidence, and convict the felon, the master shall have a writ of restitution, if it appear upon the indictment and evidence, that it was the master's money; for the statute gives restitution to the party robbed, or owner. 1 *H. H.* 542.

Or owner] If the testator is robbed, and the thief is convict upon the procurement of the executor; such executor shall have restitution: for this being a beneficial law, ought to be construed beneficially, so as to extend to executors and administrators. 3 *Inst.* 242.

Shall be restored] If goods be stolen, and not waived in flight, nor seized by the king's officers, or lord of the manor, nor sold in open market, the owner may take them again, without any writ of restitution, or may bring his action for them; and this, altho' he doth not prosecute the offender. 2 *Haw.* 168. *Kely.* 48.

And by the 31 *El. c.* 12. Where *horses* are stolen, and sold in open market, and the owner claims them again within 6 months, and pays the buyer as much as they cost him, he shall have them again, without prosecution.

But otherwise, if the goods be waived by the felon in his flight, or in case they be not waived, yet if they be seized by the king's officers, or lord of the manor, as suspecting them to be stolen; there the party shall not have restitution, unless the felon be convicted at his prosecution. 2 *Haw.* 168. *Kely.* 49.

And in such case, he shall have no more than what is mentioned in the indictment, tho' other goods were stolen at the same time; and the reason is, because by such omission, the offender might have escaped. *Kely.* 49. 1 *H. H.* 545.

To such his money, or goods] A man stole cattle, and sold them in open market; the sheriff seized the thief and the money, and he was convicted and hanged at the prosecution of the owner of the

the cattle, and he had restitution of the money; for tho' the statute gives power to the justices to award restitution of the *money or goods stolen*, and tho' the money in this case was not stolen, yet because it did arise by stealing, it shall be within the equity, tho' not in the very words of the statute. *Noy* 128.

But it hath been a great question, if goods be stolen, and by the thief sold in a market overt, whether the thief being convicted upon the evidence of the party robbed, he shall have restitution upon this statute of the thing sold or not, the buyer not being privy to the felony: But Lord *Hale* argues strongly, that he shall have restitution, notwithstanding the sale in market overt of the goods stolen. 1. Because this act was made to incourage persons robbed, to pursue malefactors, and therefore they have an assurance of restitution; and it would be small encouragement, if a thief by sale in a market overt, which is every day almost in every shop in *London*, should elude it. 2. Because the man that is robbed, is robbed against his will, and cannot help it; but the buyer of stolen goods may chuse whether he will buy, or if he buy, may yet refuse to buy, unless well secured of the property of the goods, or knowing the owner. 1 *H. H.* 542, 3, 4. 2 *Haw.* 170. *Kely.* 48.

In like manner as if the felon were attainted on appeal] And yet, upon this statute, if the offender be convict upon the evidence of the party robbed, or owner, he shall have restitution, tho' there were no fresh suit, or any inquiry by inquest touching the same; and this is constant practice, tho' in case of an appeal it be otherwise. 1 *H. H.* 545.

Yet if it shall appear to the court, that the party hath been guilty of gross neglect in prosecuting; it seemeth that in such case he shall not be intitled to restitution. 2 *Haw.* 171.

3. *By course of the common law.* If the owner takes his goods again of the offender, to the intent to favour him, or maintain him, this is unlawful, and punishable by fine and imprisonment; but if he take them again without any such intent, it is no offence. 1 *H. H.* 546. Restitution by the common law.

But after the felon is convicted, it can be no colour of crime to take his goods again, where he finds them; because he hath pursued the law upon him, and may have his writ of restitution, if he please. 1 *H. H.* 546.

Riot, rout, and unlawful assembly.

I. What is a riot, rout, or unlawful assembly.
II How the same may be restrained by a private person.
III. How by a constable, or other peace officer.
IV. How by one justice.
V. How by two justices.
VI. How by process out of chancery.

I. What is a riot, rout, or unlawful assembly.

WHEN *three persons or more shall assemble themselves together, with an intent mutually to assist one another, against any who shall oppose them, in the execution of some enterprize of a private nature, with force or violence, against the peace, or to the manifest terror of the people, whether the act intended were of it self lawful or unlawful*; If they only meet to such a purpose or intent, altho' they shall after depart of their own accord, without doing any thing, this is an *unlawful assembly*:

If after their first meeting, they shall move forward towards the execution of any such act, whether they put their intended purpose in execution or not; this, according to the general opinion, is a *Rout*:

And if they execute such a thing in deed, then it is a *Riot*. (A.) 1 *Haw.* 155. *Dalt. c.* 136.

Three persons or more] And therefore if the jury do acquit all but two, and find them guilty, the verdict is void, unless they be indicted *together with other rioters unknown*, because it finds them guilty of an offence, whereof it is impossible that they should be guilty; for there can be no riot, where there are not more persons than two. 2 *Haw.* 441.

And infants under the age of discretion are not persons within this description, punishable as rioters. 1 *Haw.* 159.

Note; In 1 *Haw.* 156, 157, 158, the words *more than three persons* are three times over inserted instead of *three persons or more*; which is only remarked as an instance, that in a variety of matter, it is impossible for the mind of man to be always equally attentive.

Assemble themselves together] It seems agreed, that if a number of persons being met together at a fair, or market, or church ale, or on any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who

who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it: Yet it is said, that if persons innocently assembled together, do afterwards upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot; because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. 1 *Haw.* 156.

In the execution of some enterprize of a private nature] It seems agreed, that the injury or grievance complained of, and intended to be revenged or remedied by such an assembly, must relate to some private quarrel only; as the inclosing of lands, in which the inhabitants of a town claim a right of common, or gaining the possession of tenements the title whereof is in dispute, or such like matters relating to the interest or disputes of particular persons, and no way concerning the publick; for wherever the intention of such an assembly is to redress publick grievances, as to pull down all inclosures in general, or reform religion, and the like, it is high treason. 1 *Haw.* 157.

Against the peace, or to the terror of the people] It seems to be clearly agreed, that in every riot there must be some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people; as the shew of armour, threatning speeches, or turbulent gestures; for every such offence must be laid to be done *to the terror of the people:* And from hence it clearly follows, that assembles at wakes, or other festival times, or meetings for exercise of common sports or diversions, as bull baiting, wrestling, and such like, are not riotous. 1 *Haw.* 157.

And from the same ground also it seems to follow, that it is possible for three persons or more to assemble together with an intention to execute a wrongful act, and also actually to perform their intended enterprize, without being rioters; as if a man assemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for such purpose, altho' another man hath better right to the thing so carried away, and that this act be wrong and unlawful; yet it is of it self no riot, except there be withal threatning words used, or other disturbance of the peace. *Dalt. c.* 137. 1 *Haw.* 157.

Much more may any person, in a peaceable manner, assemble a meet company, to do any lawful thing, or to remove or cast down any common nusance: Thus every private man, to whose house or land any nusance shall be erected, made, or done, may in peaceable manner assemble a meet company, with necessary tools, and may remove, pull, or cast down such nusance, and that, before any prejudice received thereby; and for that purpose,

if need be, may alſo enter into the other man's ground. Thus a man erected a wear croſs a common river, where people have a common paſſage with their boats, and divers did aſſemble, with ſpades, crows of iron, and other things neceſſary to remove the ſaid wear, and make a trench in his land that did erect the wear, to turn the water, ſo as they might the better take up the ſaid wear, and they did remove the ſame nuſance; this was holden neither any forcible entry, nor yet any riot. *Dalt. c.* 137.

But in the caſes aforeſaid, if in removing any ſuch nuſance, the perſons ſo aſſembled ſhall uſe any threatning words (as to ſay, they will do it tho' they die for it, or ſuch like words) or ſhall uſe any other behaviour, in apparent diſturbance of the peace, then it ſeemeth to be a riot; and therefore where there is cauſe to remove any ſuch nuſance, or to do any like act, it is the ſafeſt not to aſſemble any multitude of people, but only to ſend one or two perſons, or if a greater number, yet no more than are needful, and only with meet tools, to remove, pull, or caſt down the ſame, and that ſuch perſons tend their buſineſs only, without diſturbance of the peace, or threatning ſpeeches. *Dalt. c.* 137.

Whether the act intended were of itſelf lawful or unlawful] It hath been generally holden, that it is no way material, whether the act intended to be done by ſuch an aſſembly, be of itſelf lawful or unlawful; from whence it follows, that if three or more perſons aſſiſt a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuſance, or other thing which may lawfully be done in a peaceful manner, they are as properly rioters, as if the act intended to be done by them were never ſo unlawful. 1 *Haw.* 158.

II. How the ſame may be reſtrained by a private perſon.

By the common law, any private perſon may lawfully endeavour to ſuppreſs a riot, by ſtaying thoſe whom he ſhall ſee engaged therein, from executing their purpoſe, and alſo by ſtopping others whom he ſhall ſee coming to join them. 1 *Haw.* 159.

III. How by a conſtable or other peace officer.

By the common law, the ſheriff, conſtable, and other peace officers, may and ought to do all that in them lies, towards the ſuppreſſing of a riot, and may command all other perſons to aſſiſt therein. 1 *Haw.* 159.

IV. How by one juſtice.

By the 34 *Ed.* 3. *c.* 1. *The juſtices of the peace ſhall have power to reſtrain rioters, and to arreſt and chaſtiſe them according to their offence; and cauſe them to be impriſoned and duly puniſhed, according*

according to the law and cuſtom of the realm, and according to that which to them ſhall ſeem beſt to do, by their diſcretions and good adviſement.

And this ſtatute hath been liberally conſtrued for the advancement of juſtice; for it hath been reſolved, that if a juſtice find perſons riotouſly aſſembled, he alone, without ſtaying for his companions, hath not only power to arreſt the offenders, and bind them to their good behaviour, or impriſon them if they do not offer good bail; but that he may alſo authorize others to arreſt them, by a bare verbal command, without other warrant; and that by force thereof, the perſons ſo commanded may purſue and arreſt the offenders, in his abſence, as well as preſence. Alſo it is ſaid, that after a riot is over, any one juſtice may ſend his warrant, to arreſt any perſon who was concerned in it, and alſo that he may ſend him to gaol, till he ſhall find ſureties for his good behaviour. 1 *Haw.* 160.

But it ſeems to be agreed, that no one juſtice hath any power by force of this ſtatute, either to record a riot upon his own view, or to take an inquiſition thereof after it is over: Alſo if one juſtice, proceeding upon this ſtatute, ſhall arreſt an innocent perſon as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing himſelf, becauſe no ſingle juſtice is by this ſtatute made a judge of the ſaid offence. But if a riot ſhall be committed by perſons armed in an unuſual manner, contrary to the ſtatute of *Northampton*, 2 Ed. 3. c. 3. and any one juſtice acting *ex officio*, in purſance of the ſaid ſtatute, ſeize the armour, and impriſon the offender, and make a record of the whole matter, ſuch a record cannot be traverſed, becauſe it is made by one acting in a judicial capacity. And for the ſame reaſon, if a juſtice proceeding on the ſtatute of the 15 *R.* 2. againſt forcible entries and detainers, ſhall upon his own view record a riot, which ſhall be committed in the making of any ſuch forcible entry or detainer, a riot ſo recorded cannot be traverſed. Alſo if a juſtice acting as a judge by any ſtatute whatſoever impowering him ſo to do, make a record upon his view of a riot committed in his preſence, ſuch record ſhall not be traverſed; for the law gives ſuch an uncontroulable credit to all matters of record, made by any judge of record as ſuch, that it will never admit of an averment againſt the truth thereof. 1 *Haw.* 160.

But if the rioters are above the number of 12, the offence is greatly inhanſed, and the power of one juſtice very much inlarged, by the act commonly called the riot act, 1 *G. ſt.* 2. *c.* 5. wh ch is required to be read at every quarter ſeſſions and leet: By which it is enacted, That every juſtice, ſheriff, under ſheriff, and mayor, ſhall on notice or knowledge of any unlawful, riotous, and tumultuous aſſembly of perſons to the number of 12 or more, together with ſuch help as he ſhall command, reſort to the place. *ſ.* 2, 3.

Whereupon he ſhall, amongſt the rioters, or as near to them as he can ſafely come, with a loud voice command, or cauſe to be commanded, ſilence to be, while proclamation is making; and after that, ſhall openly and with loud voice make or cauſe to be made proclamation in theſe words, or like in effect:

Our sovereign lord the king chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of king George *for preventing tumults and riotous assemblies: God save the king* s. 2.

And if any person shall with force and arms wilfully oppose, hinder, or hurt any person that shall begin or go to make the proclamation, whereby the same shall not be made, he shall be guilty of felony without benefit of clergy. *s.* 5.

And if any 12 or more of them shall continue together by the space of one hour after such proclamation made, or after such hindrance (having knowledge thereof), they shall be guilty of felony without benefit of clergy. *s.* 1, 5.

And every justice, sheriff, under sheriff, mayor, high and petty constable, and other peace officer, and every other person of age and ability commanded by them to assist, shall apprehend the offenders, and carry them before a justice, to be proceeded against according to law. And if any rioters be killed or hurt by any the said persons in dispersing or apprehending them, by reason of their resistance, such persons shall be indemnified. *s.* 3.

Also, if any rioters (altho' under the number of 12, and whether any proclamation be made or not) shall unlawfully and with force demolish or pull down, any church or chapel, or any building for religious worship certified and registred according to the act of toleration, or any dwelling house, barn, stable, or other outhouse, they shall be guilty of felony, without benefit of clergy. *s.* 4. And any one justice may proceed against them, as against other felons.

And the hundred, city, or town, shall answer the damages thereof, as in cases of robbery. *s.* 6.

Prosecutions on this act, to be within 12 months after the offence. *s.* 8.

V. How by two justices.

1. *If any riot, assembly, or rout of people, against the law, be made; the justices, three, or two of them at the least, and the sheriff, or under sheriff, shall come with the power of the county, if need be.* 13 H. 4. c. 7 s. 1.

And *the king's liege people, being sufficient to travel, shall be assistant to them, upon reasonable warning, to ride with them in aid to resist such riots, routs, and assemblies; on pain of imprisonment, and to make fine and ransom to the king.* 2 H. 5. c. 8. s. 2.

If any riot, assembly, or rout of people, against the law, be made] It is said, that the justices are not only impowered hereby, to raise the power of the county to assist them, in suppressing a riot which shall happen within their own view or hearing, but also that they may safely do it upon a credible information given them of a notorious riot happening at a distance, whether there were any such riot in truth or not; for it may be dangerous for them to stay

till they can get certain information of the fact: But they seem to be punishable for alarming the country in this manner, without some such probable ground of their proceeding, as would induce a reasonable man to think it necessary and convenient. 1 *Haw.* 161.

Assembly] It seems clear from hence, that if the justices in going towards the place where they have heard that there is a riot, shall meet persons coming from thence riotously arrayed, they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof; for the statute extends to all other unlawful assemblies whatsoever as well as to riots. 1 *Haw.* 161.

The king's liege people] Except women, clergymen, persons decrepit, and infants under the age of fifteen. 1 *Haw.* 161.

To resist such riots] And also to arrest the rioters, and conduct them to prison. 1 *Haw.* 161.

2. *And shall arrest them.* 13 H. 4. c. 7. s. 1.

And if they shall escape, they may take them on a fresh pursuit; but they cannot at another time award any process against them on the record, but ought to send the record into the king's bench, that process may issue thereon from thence: Yet there seems to be no doubt, but that they may arrest them for their trespass on the aforesaid statute of the 34 *Ed.* 3. in order to compel them to find sureties for their good behaviour. 1 *Haw.* 162.

3. *And the same justices and sheriff, or under sheriff, shall have power to record* (B) *that which they shall find so done in their presence against the law: by which record the offenders shall be convict in the same manner and form as is contained in the statute of forcible entries.* (C) 13 *H.* 4. *c.* 7. *s.* 1.

Shall have power to record] And this they may do, whether the offenders be in custody at the same time, or have escaped. 1 *Haw.* 161.

Shall be convict] And it seemeth to be certain, that the record of a riot, expressly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great authority, that it can no way be traversed, however little ground of truth there might be to affirm, that any riot at all was committed, or however innocent the parties may be of the fact recorded against them. 1 *Haw.* 162.

However it seemeth clear, that if in such a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or rescous, the party shall be concluded thereby as to the riot only, and not as to any of the other matters; because the justices have by this statute a judicial authority over no other offences, except riots, routs, and unlawful assemblies. 1 *Haw.* 162.

And inasmuch as such a record is a final conviction of the parties, as to all such matters as are properly contained in it, it ought to

to be certain both as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact; for since the parties are concluded from denying the truth of such a record, and have no other remedy to defend themselves against it, but only by advantage of the insufficiency of what is contained in it, they may justly demand the benefit of excepting to it, if it do not expressly shew, both that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power given them by the said statutes: and from the same ground it seems also to follow, that such a record may be excepted against, if it do not appear to have been made by the sheriff or under sheriff in concurrence with the justices. 1 *Haw.* 162.

And this record ought to remain with one of the justices, and shall not be left amongst the records of the sessions, it being made out of sessions, and not appointed to be certified thither. *Dalt. c.* 82.

In the same manner and form as is contained in the statute of forcible entries] That is, the statute of the 15 *R.* 2. *c.* 2. And hereupon it is said, that the offenders being under the arrest of the justices, and also convicted by a record of their offence, ought immediately to be committed to gaol by the same justices, till they shall make fine and ransom to the king; which can be assessed by no other justices of the peace, except those by whom the record of the offence was made. 1 *Haw.* 162.

And this fine, Mr. *Dalton* says, the justices shall cause to be estreated into the exchequer, that so it may be levied to the king's use; and then they are to deliver the offenders again. *Dalt. c.* 82.

But Mr. *Hawkins* says, that it hath been questioned, whether the justices can safely dismiss the offenders upon their paying such a fine as shall be imposed upon them, without some judgment for their imprisonment as well as fine; because it is enacted by the 2 *H.* 5. *c.* 8. that such rioters attainted of great and heinous riots, shall have one whole year's imprisonment at the least, without being let out of prison by bail or mainprize; and that the rioters attainted of petty riots, shall have imprisonment as best shall seem to the king or to his council. 1 *Haw.* 164.

4. And *if the offenders be departed before the coming of the said justices and sheriff or under sheriff, the same justices, three, or two of them, shall diligently inquire* (D) *within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land.* 13 H. 4. c. 7. s. 1.

The same justices] It is generally said, that any justices of the county may take such an inquiry, whether they dwell near the place where the riot happened, or at a distance, or whether they went to view the riot or not; for the statute ought to be construed as largely as the words will bear, in favour of the justices power in the suppressing of such riots; and therefore those words in the statute that *the same justices shall inquire*, ought to be thus expounded,

expounded, that the ſame juſtices who were before impowered to raiſe the poſſe, ſhall inquire, and that is, any juſtices in the county. 1 *Haw.* 163.

Shall diligently inquire] That is, by a jury: In order to which, it is enacted by the 19 *H.* 7. *c.* 13. that the ſheriff, on their precept directed to him, ſhall, on pain of 20 *l.* return 24 perſons, whereof every of them ſhall have lands and tenements within the ſhire, to the yearly value of 20 *s.* of charter land or freehold, or 26 *s.* 8 *d.* of copyhold, or of both, over and above all charges: And he ſhall return upon every juror in iſſues, at the firſt day 20 *s.* and at the ſecond 40 *s.*

Note; *Charter land* had its name from a particular form in the charter or deed, which ever ſince the reign of *H.* 8. hath been diſuſed. 1 *Inſt.* 6.

Within a month] That is, if they do not make inquiry within a month, they are puniſhable for the neglect; yet they may inquire after the month: for the lapſe of a month doth not determine their authority, but only ſubjects them to a penalty. 2 *Salk.* 593.

Shall hear and determine according to the law of the land] And therefore they may award proceſs under their own teſte, againſt thoſe who ſhall be indicted before them of any of the offences abovementioned, according to the form of this ſtatute; and alſo may award the like proceſs for the trial of a traverſe of ſuch an inquiſition; and do all other things in relation thereunto, which are of courſe incident to all courts of record. 1 *Haw.* 163.

And the riot being ſo found by inquiſition, the juſtices muſt make a record thereof in writing of ſuch their inquiry or preſentment found before them; which record alſo is to remain with one of the juſtices. *Dalt. c.* 82.

5. And *if the truth cannot be found in the manner as is aforeſaid, then within a month then next following, the juſtices, three, or two of them, and the ſheriff or under ſheriff, ſhall certify before the king and his council, all the deed and circumſtances thereof; which certificate ſhall be of like force as the preſentment of* 12 *men; upon which certificate the offenders ſhall be put to anſwer, and ſhall be puniſhed according to the diſcretion of the king and his council.* 13 H. 4. c. 7. ſ. 2.

And if they do traverſe the matter ſo certified, the certificate and traverſe ſhall be ſent into the king's bench to be tried. id. ſ. 3.

And if the offence be not found, by reaſon of any maintenance or embracery of the jurors, then the ſame juſtices and ſheriff or under ſheriff ſhall in the ſame certificate certify the names of the maintainers and embracers, with their miſdemeanors. 19 H. 7. c. 13.

Shall certify] And it ſeemeth certain, that ſuch certificate, being in nature of an indictment at the common law, ought to comprehend the certainty of time, place, and perſons, and other material circumſtances, both of the riot and maintenance. 1 *Haw.* 165.

Before

Before the king and his council] It ſeems clear, by the council being here diſtinguiſhed both from the chancery and king's bench, that the certificate ought to be made to the privy council board, and not to either of thoſe courts, which in ſome ſtatutes relating to judicial proceedings are taken for the king's council. 1 *Haw.* 165.

6. *And the ſaid juſtices and other officers ſhall execute their offices aforeſaid at the king's coſts, in going and continuing in doing their ſaid offices, by payment thereof to be made by the ſheriff by indentures betwixt the ſaid ſheriff and juſtices, and other officers aforeſaid, whereof the ſheriff upon his account in the exchequer ſhall have due allowance.* 2 H. 5. c. 8.

In order to the defraying of which, the ſaid ſtatute directs the fines of the offenders to be inlarged; and thereout the ſheriff may pay the charges of the ſaid juſtices; and of the jury, that is, for their diet; and the ſheriff's fees, and the like. *Dalt. c.* 82.

7. And *the juſtices dwelling nigheſt in the county, where ſuch riot, aſſembly, or rout ſhall be, together with the ſheriff or under ſheriff, ſhall do execution of the ſaid ſtatute of the* 13 H. 4. *every one upon pain of* 100 l. *to the king.* ſ. 4.

The juſtices dwelling nigheſt] Altho' theſe only are liable to this penalty, yet if any others on notice ſhall neglect to ſupply their default, they are fineable at diſcretion. 1 *Haw.* 166.

But if any juſtices, who do not dwell neareſt to the place, do actually execute the ſtatute, they excuſe all the reſt. 1 *Haw.* 165.

Dwelling nigheſt in the county] Therefore if they dwell nigheſt, but in another county, they are not in danger of this penalty. 1 *Haw.* 165.

Shall do execution of the ſaid ſtatute] That is, in the whole, and not in part only; as by recording a riot, and not committing the parties. 1 *Haw.* 166.

VI. How by proceſs out of chancery.

By the 2 *H.* 5. *c.* 8. *If default be found in the two juſtices, ſheriff, or under ſheriff, then at the inſtance of the party grieved, a commiſſion ſhall be iſſued under the great ſeal, to inquire as well of the truth of the caſe for the complainant, as of ſuch default.*

And by the 2 *H.* 5. *c.* 9. and 8 *H.* 6. *c.* 14. *Rioters ſhall be taken by writ and proclamation out of chancery, on ſuggeſtion of two juſtices and the ſheriff, of the common fame of ſuch riot.*

A. Indictment for a riot.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* O. A. *late of the pariſh of* ——— *in the county of* ——— *yeoman,* B. O. *late of the ſame, yeoman,* C. O. *late of the ſame, yeoman, and divers other perſons (to the jurors aforeſaid as yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, with force and arms, unlawfully, riotouſly, and*

and routouſly did aſſemble and gather together, to diſturb the peace of our ſaid lord the king; and ſo being then and there aſſembled and gathered together, in and upon one A. I. *in the peace of god and of our ſaid lord the king then and there being, unlawfully, riotouſly, and routouſly did make an aſſault, and him the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did beat, wound, and ill treat, and other wrongs to the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did; to the great damage of the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

B. Record of a riot on view.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *We* J. P. *and* K. P. *eſquires, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and* A. S. *knight, ſheriff of the ſaid county, at the complaint an requeſt of* A. I. *of* ——— *in the county aforeſaid, yeoman, in our proper perſons have come to the manſion houſe of him the ſaid* A. I. *in* ——— *aforeſaid, and then and there do find* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, and other malefactors and diſturbers of the peace of our ſaid lord the king to us unknown, to the number of* 11 *perſons, in a warlike manner arrayed, to wit, with clubs, ſwords, and guns unlawfully, riotouſly, and routouſly aſſembled, and the ſame houſe beſetting, many evils againſt him the ſaid* A. I. *threatning, to the great diſturbance of the peace of our ſaid lord the king, and terror of his people, and againſt the form of the ſtatute in that caſe made and provided. And therefore we the aforeſaid* J. P. K. P. *and* A. S. *the aforeſaid* A. O. B. O. *and* C. O. *do then and there cauſe to be arreſted, and to the next gaol of our ſaid lord the king in the county aforeſaid to be conveyed, by our view and record of the unlawful aſſembly, riot, and rout aforeſaid convicted, there to remain every and each of them reſpectively, until they ſhall ſeverally and reſpectively have paid to our ſaid lord the king the ſeveral ſum of* 10 l. *each, which we do impoſe upon them and every of them ſeparately for their ſaid offence. In teſtimony whereof, to this our preſent record we do put our ſeals. Dated at* ——— *aforeſaid, the day and year aforeſaid.*

C. Commitment of the rioters upon view.

Weſtmorland. J. P. *and* K. P. *eſquires, two of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, and* A. S. *knight, ſheriff of the ſaid county; To the keeper of the gaol of our ſaid lord the king at* ——— *in the ſaid county, and to his deputy and deputies there, and to every of them, greeting.*

Whereas upon complaint made unto us by A. I. *of* ——— *yeoman, we did this preſent* ——— *day of* ——— *go to the houſe of the ſaid* A. I. *at* ——— *aforeſaid, and there did ſee* A. O. *of* ———

yeoman,

yeoman, B. O. *of* ——— *yeoman*, C. O. *of* ——— *yeoman, and other malefactors to us unknown, assembled together in an unlawful, routous, and riotous manner, to the terror of the people, and against the peace of our said lord the king, and against the form of the statute in that case made and provided: We do therefore send you, by the bringers hereof, the bodies of the said* A. O. B. O. *and* C. O. *convicted of the said riot, rout, and unlawful assembly, by our own view, testimony, and record; commanding you in the name of our said lord the king, to receive them into the said gaol, and them and every of them respectively there safely to keep, until they and every of them shall respectively pay to our said lord the king, the several and respective sum of* 10 l. *each, which we have set and imposed upon them, and each and every of them separately for the said offence. Given under our hands and seals at* ——— *aforesaid, in the county aforesaid, the day and year aforesaid.*

D. Precept to summon a jury.

Westmorland. J. P. *and* K. P. *esquires, two of the justices of our lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, To the sheriff of the said county, greeting. On the behalf of our said lord the king we command you, that you cause to come before us at* ——— *in the county aforesaid, on the* ——— *day of* ——— *next ensuing,* 24 *honest and lawful men of the county aforesaid, every one of which to have lands and tenements within the said county to the yearly value of* 20 s. *of charter land or freehold, or of* 26 s. 8 d. *of copyhold, or of both, over and above all charges, to inquire for our said lord the king, and for our indemnity in this behalf, upon their oath, of certain riots, routs, and unlawful assemblies, at* ——— *in the county aforesaid, lately committed, as it is said; And that you return upon every person so by you to be impanelled* 20 s. *of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to inquire of the premisses at the said time and place. And this you shall in no wise omit, on pain of* 20 l. *Given under our hands and seals at* ——— *aforesaid, in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Jurors oath.

YOU *shall true inquiry and presentment make of all such things as shall come before you, concerning a riot, rout, and unlawful assembly said to have been lately committed at* ——— *in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you god.*

The oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts: So help you god.

The

The inquisition, indictment or presentment of the jury.

Westmorland. AN *inquisition for our lord the king, indented and taken at* ——— *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oath of* ——— *honest and lawful men of the county aforesaid, before* J. P. *and* K. P. *esquires, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, who say upon their oath aforesaid, that* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, together with other malefactors and disturbers of the peace of our said lord the king, to the jurors aforesaid as yet unknown, on the* ——— *day of* ——— *now last past, at* ——— *aforesaid, in the county aforesaid, with force and arms, to wit, with clubs, swords, and guns, unlawfully, routously, and riotously did assemble, to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, the mansion house of* A. I. *yeoman, at* ——— *aforesaid, unlawfully, routously, and riotously did enter, and in and upon him the said* A. I. *then and there unlawfully, routously, and riotously did make an assault, and him the said* A. I. *then and there unlawfully, routously, and riotously did beat, wound, and ill treat, in disturbance of the peace of our said lord the king, and to the terror of his people, and against the form of the statute in such case made and provided.*

We whose names are hereunto set, the abovesaid jurors, do find this inquisition true;

A. B.
C. D. *&c.*

We the justices abovesaid do hereby impose the fines here under written, on the abovesaid offenders;

A. O. 20 *l.*
B. O. 20 *l.*
C. O. 20 *l.*

Rivers and navigation.

Destroying locks and sluices.

1. BY the 8 *G.* 2. *c.* 20. If any person shall wilfully or maliciously pluck up, throw down, or otherwise destroy any lock, sluice, floodgate, or other works on any navigable river, erected by authority of parliament; he shall be guilty of felony without benefit of clergy: And the hundred shall answer damages, not exceeding 20 *l.*

Filling up havens.

2. And by the 19 *G.* 2. *c.* 22. If any person acting as master of a ship, shall cast out, or there shall be cast out, of any vessel being within any haven, road, channel, or navigable river, any ballast, or rubbish, but only on the land where the tide never comes; any one justice near the place, may summon the master or owner, or other person acting as such, against whom the information shall be made, or issue his warrant to bring him before him; and upon due proof made, either by confession of the party offending, or on view of such justice, on oath of one witness, that any ballast or rubbish hath been cast out, the master, or person acting as such, shall be adjudged the offender, and shall forfeit not above 5 *l.* nor under 50 *s.* half to the informer, and half to the poor of the parish or place where such conviction shall be pronounced: To be levied by distress of the goods of the person so convicted, or of the ship or tackle; and the same, if not redeemed in 5 days, to be sold, rendring the overplus if any be, after demand in writing, charges of distress and sale being first deducted. For want of sufficient distress, to be committed to gaol or to the house of correction where the conviction shall be, for two months, or till payment of the penalties, or so much thereof for which the commitment shall be.

And as soon as any vessel shall be sunk, stranded, or run ashore, in any harbour, channel, or navigable river, or be brought in, or be there in a shattered condition, and permitted to remain there, and the owner or master shall begin to take down, or carry away any of the rigging or tackle, or if there shall not be any person to take care of such vessel; any one justice for the county or place, or near which such fact shall happen, shall on information thereof summon the owner, or other person having or pretending to have the command thereof, or issue his warrant to bring him before him; and on conviction shall issue his warrant for seizing and removing such vessel, and also the rigging, and tackle thereof, in such manner as he shall order and direct; if such person shall not within 5 days give satisfactory security to the justice, to clear the harbour of such vessel, and of all wreck and parts thereof, and pay the charges of seizing, removing, and disposing of the vessel and furniture, then the justice shall cause the hulk and tackle to be sold, and with the money pay the charges of clearing the place where the vessel shall lie, and of seizing, removing, and selling the same, rendring the overplus to the owner of the manor where the same shall happen.

Stealing goods on a navigable river.

3. By the 24 *G.* 2. *c.* 45. All persons who shall feloniously steal any goods of the value of 40 *s.* in any ship, boat, or vessel, on any navigable river, or in any port of entry or discharge, or from any wharf or key, or shall be present and aiding therein, shall be excluded from the benefit of clergy.

Robbery.

I. What it is.
II. Widening of highways to prevent robberies.
III. Assaulting with intent to rob.
IV. Levying hue and cry on a robbery committed.
V. Hundred when liable to answer damages.
VI. Manner of bringing the action against the hundred.
VII. Damages how to be levied and applied.
VIII. Reward for apprehending a robber.
IX. Pardon for discovering an accomplice.
X. Principal and accessary in robbery.
XI. Punishment of robbery.
XII. What shall be done with the goods of which a person is robbed.

I. What it is.

1. THERE are two kinds of robbery; from the *person*, and from the *house*: It is the former of these that is treated of under this title; the latter, *viz.* robbery from the house, belongeth to the titles **Larceny** and **Burglary**. Two kinds of robbery.

2. Robbery, Lord *Coke* says, is derived from the *French de la robe*, both because they bereave the true man of his *robes*, and also for that his money is taken by them from some part of his garment, or robes about his person. But in truth the word seemeth to be much ancienter than the introduction of the *French* into our language; and probably was deduced unto us through the channel of *Saxony* or *Denmark*. *Robber*, in the *Saxon* is *reofere*; in the *Low Dutch*, *roover*; in the *Danish*, *roffiure*; by a transmutation of the letters *b*, *f*, and *v*, frequent in all kindred languages. The *Gothick* translation of the gospels useth *biraubodedun* to signify *they robbed*, from *birauban*, to *rob*; which being stripped of the prefix augmentative is *rauban*. The *Saxons* expressed the same by *bereafodon*, which we still preserve when we say *they bereaved*: and in the northern parts of *England*, the words *robbing* and *reaving* are still used promiscuously to signify rapine and plunder; and when the violent winds do strip a house of its thatch or covering, it is called *reaving*. Derivation of the word robbery.

3. Robbery *is a felony by the common law, committed by a violent assault upon the person of another, by putting him in fear, and* Definition of robbery.

taking from his person, his money or other goods, of any value whatsoever. 3 Inst. 68.

From his person] Taking a thing in a man's presence, is in law a taking from the person. *Hale's Pl.* 73. *Str.* 1015. *K.* against *Francis* and others.

Thus, if one take or drive my cattle out of my pasture, in my presence, this is robbery, if he make an assault upon me, or put me in fear. *Hale's Pl.* 73.

II. Widening of highways to prevent robberies.

Wood near highways.

Highways leading from one market town to another, shall be enlarged, so that there be neither dyke, tree, nor bush, except ashes or great trees, whereby a man may lurk to do hurt, within 200 foot of each side. And if by default of the lord, that will not avoid the dyke, underwood, or bushes, any robberies be done, the lord shall be answerable for the felony; and if murder be done, the lord shall make a fine at the king's pleasure. And if a park be taken from the highway, it shall be set at 200 foot distance; or else a fence shall be made, so as offenders may not pass nor return to do evil. 13 *Ed.* 1. *st.* 2 *c.* 5.

It is observable, that when this act was made, the country was fuller of wood than it is at present.

III. Assaulting with intent to rob.

Assaulting with intent to rob.

1. If any person shall with any offensive weapon assault, or by menaces, or in any forcible or violent manner, demand any money or goods, with a felonious intent to rob him, he shall be guilty of felony, and be transported for 7 years. 7 *G.* 2. *c.* 21.

Killing a person intending to rob.

2. If any person be indicted, or appealed, for killing any person attempting to rob, he shall be acquitted. 24 *H.* 8. *c.* 5.

IV. Levying hue and cry on a robbery committed.

Hue and cry.

Immediately upon robberies committed, fresh suit shall be made from town to town, and from county to county. 13 *Ed.* 1. *st.* 2. *c.* 1.

V. Hundred when liable to answer damages.

Hundred shall answer.

1. The hundred where the offence was committed, shall be answerable for the robberies, and for the damages, if the offender be not taken. 13 *Ed.* 1. *st.* 2. *c.* 2. 28 *Ed.* 3. *c.* 11.

Hundred neglecting hue and cry, shall contribute.

2. But such hundred may recover back half the damages, from any other hundred where fresh suit after hue and cry shall not be made. 27 *El.* *c.* 13. *s.* 2.

Hundred not answerable, if a robber is apprehended.

3. But the hundred shall not be chargeable, if one robber be apprehended in 40 days from the publication in the gazette; as is hereafter mentioned. 8 *G.* 2. *c.* 16. *s.* 3.

4. Also,

4. Alſo, a new highway changed for an ancient one, without a writ of *ad quod damnum*, and an inquiſition found thereon, is ſaid to be not ſuch a highway, in which the inhabitants are bound to watch, nor to make amends for a robbery therein committed. 1 *Haw.* 202. Nor for a robbery in a new highway.

5. Likewiſe if any perſon, which ſhall travel upon the lord's day, ſhall be then robbed, the hundred ſhall not be liable: nevertheleſs they ſhall make hue and cry, on pain of forfeiting to the king as much as might have been recovered againſt the hundred, if the robbery had not been on the lord's day. 29 *C.* 2. *c.* 7. *ſ.* 5. Nor if on the lord's day.

Which ſhall travel] *M.* 7 *G. Teſhmaker* againſt the hundred of *Edmington*. The plaintiff lived a mile from the church, and going thither with his lady in his coach upon a *Sunday*, was robbed; and brought his action againſt the hundred, and recovered; for the ſtatute extends only to the caſe of *travelling*: but *Pratt* Ch. J. ſaid, if they had been going to make viſits, it might have been otherwiſe. *Str.* 406.

6. Alſo, if any man be robbed in his houſe, the hundred ſhall not be charged therewith, whether it were done by day or night; becauſe every man's houſe is his caſtle, which he ought to defend; and if any one is robbed in his houſe, it ſhall be eſteemed his own fault. *Dalt. c.* 84. Nor if it be in an houſe.

7. Alſo, a robbery done in the night, ſhall not charge the hundred; but yet if it be in the day time, or there be ſo much day light as that one may ſee a man's face, ſo that the robber may be known, tho' it be before the ſun riſing, or after the ſun ſetting, the hundred ſhall anſwer for it. *Dalt. c.* 84. Nor if it be in the night.

8. By the 22 *G.* 2. *c.* 24. No perſon ſhall recover againſt the hundred, more than the value of 200*l.* unleſs the perſons robbed, ſhall at the time of the robbery be together in company, and be in number two at the leaſt, to atteſt the truth of his or their being ſo robbed. In what caſe there muſt be two in company.

9. And by the yearly land tax acts, no receiver general, or any of his agents employed for carrying any money on account of the ſaid tax, ſhall maintain an action againſt the hundred for being robbed, unleſs the perſons carrying ſuch money, be together in company, and be in number three at the leaſt. In what caſe three in company.

VI. Manner of bringing the action againſt the hundred.

In order to make the hundred liable, theſe things following muſt be done:

1. *The perſon robbed ſhall, with as much convenient ſpeed as may be, give notice thereof, unto ſome of the inhabitants near the place.* 27 El. c. 13. ſ. 11. Notice to the inhabitants

And tho' that place, where notice is given, be in another hundred or county, yet it is good enough; for a ſtranger may not know the confines of the hundred or county: and that hundred where notice is given muſt make hue and cry, and by that means

the hundred where the robbery was committed will ſoon know thereof. *Cro. Ca.* 41, 379. 3 *Salk.* 184.

Notice to a conſtable.

2. *He ſhall alſo give notice, with as much convenient ſpeed as may be, to a conſtable of the hundred, that is, the high conſtable, or to a conſtable of ſome place near; or leave notice in writing at his houſe, deſcribing therein the felon, and the time and place of the robbery.* 8 G. 2. c. 16. ſ. 1.

M. 16 *G.* 2. *Ball* againſt the hundred of *Wymerſley.* Upon a caſe made at the aſſizes, it was ſtated, that ſoon after ſix in the morning, the plaintiff was robbed at two miles and a half diſtance from *Northampton,* and the highwayman cut his bridle and ſtirrups, threw them into a ditch, and turned his horſe looſe; that the plaintiff recovered them, remounted, rode through a village called *Cotton,* where he gave no notice, met three men on the road whom he informed of the robbery, and arrived at *Northampton* by ſeven o'clock, and gave notice to an innkeeper there, from whence he went to *Rotherthorpe,* three miles off, where the high conſtable lived, and between 8 and 9 gave notice. And whether this notice was ſufficient to maintain the action, was the queſtion. And the court on argument held it to be good notice, for the high conſtable is the propereſt perſon to go to, and it is not required that he go to the next conſtable. It appears the plaintiff loſt no time, conſidering the circumſtances he was in; and *Rotherthorpe* is not at ſuch a diſtance, but that it may come within the meaning of the word *near.* So the plaintiff had judgment. *Str.* 1170.

And every conſtable, to whom ſuch notice ſhall be given, and every high and petty conſtable within the hundred, as ſoon as the ſame ſhall come to his knowledge, by the party robbed, or by any to whom ſuch notice hath been given, ſhall with the utmoſt expedition make and cauſe to be made freſh ſuit and hue and cry after the felons, on pain of 5 *l.* with coſts, half to the king, and half to him who ſhall ſue. 8 *G.* 2. *c.* 16. *ſ.* 11, 12. Note; the penalty here is but ſmall; but as the not purſuing hue and cry was alſo an offence at common law, the offender may be indicted at the common law, and thereupon fined and impriſoned.

Notice in the gazette.

3. The party robbed ſhall alſo, within 20 days, cauſe notice to be given in the gazette (A) deſcribing therein the felon, and the time and place of the robbery, and the goods and effects whereof he was robbed. 8 *G.* 2. *c.* 16. *ſ.* 1.

To be examined on oath.

4. *He ſhall alſo be examined on oath* (B), *within* 20 *days next before the action brought, before a juſtice in or near the hundred, whether he knows any of the robbers: and if he confeſſes that he does, he ſhall before the action brought, be bound over by the ſaid juſtices to proſecute.* 27 El. c. 13. ſ. 11.

He ſhall alſo be examined] That is, the party robbed, who is to bring the action, ſhall be examined. But here note a diverſity. *T.* 2 *Car. Raymund* and hundred of *Oking.* The *ſervant* was robbed of his maſter's goods, and the ſervant made oath before a juſtice, and the maſter brought the action againſt the hundred. By the court; The action well lies for the maſter; and the ſervant's oath is ſufficient, for it was properly in his notice, that he

was

was robbed, and did not know any of the robbers, and the maſter knows it not that he was robbed, or who were the perſons, but by report of his ſervant; and it would be inconvenient, if the maſter ſhould not bring the action, but the ſervant only; for the ſervant might releaſe, or compound, or diſcontinue the ſuit, and ſo the maſter ſhould have the loſs by his falſhood: therefore the maſter ſhall bring the action, and have his ſervant who was robbed, to be his witneſs. *Cro. Car.* 37.

Within 20 *days next before*] And the time of making ſuch oath muſt be laid in the declaration, for that is traverſable. 3 *Salk.* 184.

Before a juſtice] And if the juſtice ſhall refuſe upon his requeſt, to examine him, an action will lie againſt the juſtice; becauſe he doth not act therein as a judge of record, but as a miniſter appointed for the examination by the ſtatute. *Cro. Car.* 211.

Whether he knows any of the robbers] *H.* 19 *G.* 2. *William King* againſt the hundred of *Biſhop's Sutton.* In an action brought againſt the hundred, the oath proved was, that he had *good reaſon to ſuſpect* the fact was done by *Robert Gibbs* and *William Langford*, both of ſuch a pariſh. And a doubt ariſing at the aſſizes, whether this was ſufficient or not, a caſe was made, and twice argued at the bar. And upon the ſecond argument, the court were of opinion, that the examination did not maintain the action. The oath required is a condition precedent, and for the ſake of the hundred, and to prevent ſcreening the offenders. There is a great deal of difference between *ſuſpecting* and *knowing:* a man who *knows* the offender may purpoſely ſtop at the word *ſuſpect*; to avoid being bound to proſecute: and though it would be equivocating, yet it would hardly be perjury aſſignable; it being only a ſuppreſſion of part of the truth. He ſhould have ſaid, *I ſuſpect them to be the men, but I do not know it.* It will be dangerous to let them go out of the words of the act; and therefore the plaintiff failed in the action, and paid the coſts of a non-ſuit. *Str.* 1247.

5. Alſo before the action be commenced, he ſhall go before the chief clerk, or ſecondary, or the filazer of the county, or the clerk of the pleas of that court wherein ſuch action is intended to be brought, or their deputies, or before the ſheriff of the county, and enter into 100 *l.* bond, to the high conſtable, with two ſufficient ſureties, to pay him coſts, if he (the proſecutor) ſhall be caſt. And no greater fee ſhall be taken for the bond, than 5 *s* above the ſtamp. 8 *G.* 2. *c.* 16. *ſ.* 1, 2. Bond to pay coſts.

6. If bond is taken before the ſheriff, he ſhall immediately certify the ſame in writing, to the reſpective officer abovementioned; which certificate the perſon robbed ſhall deliver to ſuch officer before the action is brought: and he ſhall pay not more than 2 *s.* 6 *d.* fee to the ſheriff for making ſuch certificate, nor more than 2 *s.* 6 *d.* to the officer for receiving and filing the ſame. And the bond ſhall be delivered to the high conſtable *gratis.* 8 *G.* 2. *c.* 16. *ſ.* 2. Bond to be certified.

7. All this being done, and 40 days being expired from the day of the publication in the gazette (for if one of the offenders Time of bringing the action.

is apprehended within that time, the action will not lie, 8 *G.* 2 *c.* 16 *f.* 3.); and also a whole year not being expired from the time of the robbery committed (for if a year is expired, in such case also the action will not lie, by the 27 *El.* *c.* 13. *f.* 9.) But all these things being regularly and duly performed, then the action may be brought.

Process to be served on the high constable.

8. And the process shall be served on the high constable only; who shall cause publick notice thereof to be given in one of the principal market towns on the next market day; and if there is no market town in the hundred, then in some parish church within the hundred, on the next *Sunday*, immediately after divine service. He shall also enter appearance, and defend the action, as he shall be advised. 8 *G.* 2. *c.* 16. *f.* 4.

Inhabitants may be witnesses.

9. On the trial; any inhabitant may be a witness for the hundred. 8 *G.* 2. *c.* 16. *f.* 15.

VII. Damages how to be levied and applied.

Writ of execution to be shewn to two justices.

1. If the plaintiff recover, the sheriff shall shew the writ of execution to two justices (1 Q.) in or near the hundred. 27 *El.* *c.* 13. *f.* 5. 8 *G.* 2. *c.* 16. *f.* 4.

And the high constable's charge.

2. The high constable also shall cause his attorney's bill to be taxed by the proper officer, and shall give in to the said justices an account thereof, and of his other expences in defending the action, and make due proof of the same upon oath, to the satisfaction of the said justices. 8 *G.* 2. *c.* 16. *f.* 4

Taxation.

3. The said two justices shall thereupon cause a taxation to be made, and levied in 30 days, upon every division within the hundred, by the constables, by distress and sale. 8 *G.* 2. *c.* 16. *f.* 4, 10.

Payment.

4. And the constables shall in ten days pay the same to the sheriff, and the sheriff shall pay the same without fee to the plaintiff for his costs and damages, and to the high constable for his expences. 8 *G.* 2. *c.* 16. *f.* 4, 5.

High constable to be reimbursed, if the plaintiff is cast.

5. The high constable shall in like manner, if he recovers against the plaintiff, be reimbursed his expences which shall be over and above the costs to be taxed, and also such costs taxed as he shall not be able to recover, by reason of the insolvency of the plaintiff and of his sureties; which shall be paid in ten days to the said two justices, or one of them, who shall upon request deliver over the same to the high constable. 8 *G.* 2. *c.* 16. *f.* 7, 8.

Return of the writ.

6. And the sheriff shall not be obliged to return the writ of execution, till after 60 days from the time it shall be delivered to him; that there may be time for the taxation, assessment, and collecting the money. 8 *G.* 2. *c.* 16. *f.* 6.

VIII. Reward for apprehending a robber.

10 l. by the hundred.

1. Any person or persons apprehending a felon, whereby the hundred becomes indemnified, shall have 10 *l.* reward paid by the hundred; the same to be ascertained, levied, and paid, by two justices

Juſtices (1 Q.) in or near the hundred, in ſuch proportions as they ſhall think reaſonable, within the hundred. 8 *G.* 2. *c.* 16. *ſ.* 9.

2. And moreover, every perſon who ſhall apprehend a highwayman, and proſecute him till he be convicted of any robbery committed in or upon any highway, paſſage, field, or open place, ſhall have from the ſheriff of the county where the robbery and conviction was made and done, without paying any fee for the ſame, the ſum of 40 *l.* within one month after ſuch conviction and demand thereof made, by tendring a certificate to the ſheriff, under the hand of the judge, certifying the conviction of ſuch felon for a robbery done within the county of the ſaid ſheriff, and alſo that ſuch felon was taken by the perſon claiming the reward. 4 *W.* *c.* 8. *ſ.* 2. 40 l. by the king.

For which certificate ſhall be paid, for writing and drawing thereof, 5 *s.* and no more. 6 *G.* *c.* 23. *ſ.* 8.

And if any diſpute ſhall ariſe between the perſons apprehending, touching their right to the reward, the judge ſhall by the ſaid certificate direct it to be paid unto and amongſt the parties claiming, in ſuch proportions as to him ſhall ſeem juſt and reaſonable. And if the ſheriff ſhall make default of payment, he ſhall forfeit double, with treble coſts. 4 *W.* *c.* 8. *ſ.* 2.

And the ſtreets of *London* and *Weſtminſter*, and of other cities, towns, and places, ſhall be deemed highways as to this matter. 6 *G.* *c.* 23. *ſ.* 8.

3. And as a further reward, ſuch perſon ſhall have moreover the horſe, furniture, and arms, money, or other goods of the robber, that ſhall be taken with him, notwithſtanding the right of the king, or lord of the manor, or of the perſon lending or letting the ſame to hire: but ſaving the right of them from whom they may have been feloniouſly taken. 4 *W.* *c.* 8. *ſ.* 6. And the goods taken with the highwayman.

4. And if a perſon is killed in endeavouring to apprehend ſuch highwayman, the ſheriff ſhall pay the like ſum of 40 *l.* without fee, under the like penalty, to the executors or adminiſtrators of the perſon killed; immediately, upon certificate delivered to him under the hand and ſeal of the judge of aſſize for the county where the fact was done, or the two next juſtices, of ſuch perſon being ſo killed: Which certificate, the ſaid judge, or juſtices, upon proof before them made, ſhall give immediately without fee. 4 *W.* *c.* 8. *ſ.* 3. Perſon killed in apprehending a highwayman.

5. And the ſheriff ſhall have the ſaid rewards allowed to him in his accounts. 4 *W.* *c.* 8. *ſ.* 4. Sheriff to be allowed the reward in his accounts.

IX. Pardon for diſcovering accomplices.

If any perſon, being out of priſon, ſhall commit any robbery, and afterwards diſcover two or more perſons, who ſhall commit any robbery, ſo as two or more be convicted; he ſhall have the king's pardon for all robberies he ſhall have committed before ſuch diſcovery; which pardon ſhall be likewiſe a bar againſt any appeal for ſuch robbery. 1 *W.* *c.* 8. *ſ.* 7. Pardon for diſcovering accomplices.

X. Principal

X. *Principal and accessary in robbery.*

Accessary.

All that come in company to rob, are principals, tho' one only actually do it. *Hale's Pl.* 72.

XI. *Punishment of robbery.*

Clergy.

1. Robbery is generally excluded from the benefit of clergy. 3 *Inst.* 68. 2 *Haw.* 351—357. 2 *H. H. c.* 48.

Pardon.

2. And by the 20 *G.* 2. *c.* 52. Robbery is excepted out of the general pardon.

Navy.

3. By the 22 *G.* 2. *c.* 33. Robbery in the navy shall be punished with death, or otherwise, as a court martial, on consideration of circumstances, shall find meet.

Restitution of goods taken by robbery.

XII. *What shall be done with the goods of which a person is robbed.*

1. If the person robbed doth not prosecute the robber; if his goods are waived in flight, or seized by the king's officers, or lord of the manor, he shall not have them restored. *Kely.* 49.

2. But if they are not waived in flight, nor seized by the king's officers, or lord of the manor, he may take his goods again wherever he finds them, without the formality of restitution being awarded, if they be not sold in open market; and this also, altho' he doth not prosecute the robber. *Kely.* 48.

3. But if he shall prosecute the robber to conviction; he shall have restitution, altho' they have been waived, and seized, and even sold in open market. *Kely.* 48.

A. Notice in the gazette, before the action brought against the hundred.

NOTICE *is hereby given (pursuant to an act of parliament made in the eighth year of the reign of his present majesty king* George *the second, intitled,* An act for the amendment of the law relating to actions on the statute of hue and cry) *that* A. I. *of* ——— *in the county of* ——— *gentleman, on* ——— *the* ——— *day of* ——— *now last past, between the hours of eight and nine in the forenoon of the same day, was overtaken and robbed by two persons, in the highway between* ——— *and* ——— *in the county of* ——— *one of them being a tall thin man, marked on the face with the small pox, and having on a brown riding coat, and mounted on a black mare; the other a middle sized man, wearing his own hair of a light brown colour, and riding on a grey gelding; which persons took from him the said* A. I. *ten guineas in gold, seven shillings in silver, an halfpenny, and a silver watch, and then made off.*

B. Examination

B. Examination of the perſon robbed, before the action brought.

Weſtmorland. THE *examination of* A. I. *of* ——— *in the county aforeſaid, yeoman, taken on oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, dwelling in* [or, *near to*] *the hundred of* ——— *within the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

Who ſaith, that on Monday *the* ——— *day of this preſent month of* ——— *between the hours of two and three in the afternoon of the ſame day, at or near a place called* ——— *he was aſſaulted in the highway there leading from* ——— *to* ——— *by two horſemen, whereof one was a tall luſty man, wearing a black wig, and a blue grey coat, mounted on a bay gelding about fifteen hands high, with a black mane and tail, and ſtar in his forehead; and the other a middle ſized man, of a ſwarthy complexion, having a large ſcar on his left cheek, having on a dark brown riding coat, and mounted on a black gelding; and by them robbed in the highway aforeſaid, of the ſum of* ——— *in money, one ſilver watch of the value of* 4 *l.* *and one pocket book: And that he the ſaid* A. I. *at the time of the ſaid robbery committed, did not know, nor yet doth know, either of the ſaid perſons who committed the ſame: And that he is ſince informed, that the ſaid highway and place where he was ſo robbed as aforeſaid, are in the pariſh of* ——— *and within the hundred of* ——— *in the ſaid county.*

Taken, made, and ſigned the day and year above written, A. I.

Before me

J. P.

Rout. See **Riot.**

Rum. See **Exciſe.**

Run goods. See **Exciſe.**

Sabbath. See Lord's day.

Sail cloth.

BY the 9 *G.* 2. *c.* 37. (which by the 24 *G.* 2. *c.* 52. hath continuance to *Dec.* 25. 1757, *&c.*) every maker of *Britiſh* ſail cloth, ſhall ſtamp his name and place of abode in words at length on every piece; on pain of 10 *l.* on conviction by the oath of one witneſs before one juſtice: And if any perſon ſhall wilfully obliterate

obliterate the ſtamp, or ſtamp another perſon's name and place of abode, and not his own, he ſhall forfeit 5 *l.* (and by the 4 *G* 2. *c.* 27. 10 *l.*) to the informer; by diſtreſs, by warrant of two juſtices.

Sacraments. See Publick worſhip.
Sacrilege. See Larceny, Burglary.
Salmon. See Game.
Salt. See Exciſe.

Sanctuary.

BY the 21 *J.* *c.* 28. *ſ.* 7. No ſanctuary, or privilege of ſanctuary, ſhall be admitted or allowed in any caſe.

Scavengers.

THE juſtices in any city or market town (not having already proviſion made for them therein by any former law), at their general or quarter ſeſſions, may appoint ſcavengers for cleanſing the ſtreets, and may order the repairing ſuch ſtreets therein as they ſhall judge neceſſary; and for defraying the chages thereof, an aſſeſſment not exceeding 6 *d.* in the pound for one year, may be made, levied, and collected as by their order in ſuch ſeſſions they ſhall appoint; which, being allowed under their hands and ſeals, may (if not paid in 8 days after demand) be levied by their warrant by diſtreſs, rendring the overplus, after deducting the charges of making, keeping, and ſelling ſuch diſtreſs. 1 *G.* *ſt.* 2. *c.* 52. *ſ.* 9. 9 *G.* *c.* 18. *ſ.* 3.

There are ſeveral acts which direct the paving and cleanſing the ſtreets in *London* and *Weſtminſter*, and within the bills of mortality, which not being of general concern, are only mentioned in this place; to wit,

22 *C.* 2. *c.* 12.
22 & 23 *C.* 2. *c.* 17.
2 *W.* *ſeſſ.* 2. *c.* 8.
8 & 9 *W.* *c.* 37.

Schoolmasters.

1. NONE shall teach school, unless allowed by the bishop, on pain of the censures of the church: And curates desirous to teach, shall be licensed before others, except where there is a publick school founded. *Can.* 77, 78.

Licence of schoolmasters.

2. How far schoolmasters, being protestant dissenters, are exempted, as such, from the penalties inflicted by the laws for teaching school without licence, is treated of under the title **Dissenters.**

Dissenters teaching without licence.

3. If any papist shall keep school, or take upon him the education, or government, or boarding of youth, he shall be adjudged to perpetual imprisonment. 11 & 12 *W.* *c.* 4. *s* 3.

Papist teaching school.

4. Where a schoolmaster, in correcting his scholar, happens to occasion his death; if in such correction he is so barbarous as to exceed all bounds of moderation, he is at least guilty of manslaughter; and if he make use of an instrument improper for correction, and apparently endangering the scholar's life, as an iron bar, a sword, or kick him to the ground, and then stamp on his belly, and kill him, he is guilty of murder. 1 *Haw.* 73, 74.

Schoolmaster by correction killing his scholar.

Seamen.

FOR apprentices to the sea service, see title **Apprentices.**

1. No listed seaman shall be taken out of his majesty's service, by any process, other than for some criminal matter, unless affidavit be first made, that the debt or damage amounts to 20 *l.* 1 *G.* 2. *st.* 2. *c.* 14. *s.* 15.

In what cases they may be arrested.

But the plaintiff may, on notice first given to the defendant, enter a common appearance, and proceed to judgment and outlawry, and have execution other than against his body. *s.* 16.

2. No court martial may punish or try any offence committed by any seaman in his majesty's service, which shall not be committed on the main sea, or in great rivers beneath the bridges, or in a haven or creek within the jurisdiction of the admiralty; except in the case of spies, or of mutiny and desertion, or disobedience, or of offences committed on land in foreign countries. 22 *G.* 2. *c.* 33. *s.* 40.

What offences the court martial may punish.

3. Seamen who have been employed in the king's service since the accession of King *George* the second, and not deserted, may set up and exercise such trades as they are apt for, in any town or place in *Great Britain* or *Ireland*, without molestation (except in *Oxford* or *Cambridge*); and if any person is sued thereupon, and the plaintiff is cast, such person shall have double costs. 22 *G.* 2. *c.* 44.

Where they may exercise trades.

Convicted of swearing.

4. A seaman, instead of being committed to the house of correction, for default of paying the penalty for swearing, shall be put in the stocks for one hour for every single offence, and for any number of offences of which he shall be convicted at one and the same time, two hours. 19 *G.* 2. *c.* 21. *s.* 5.

In what case not to be deemed vagrants.

5. A seaman having a testimonial under the hand and seal of a justice of the peace, setting forth the time and place of landing, and the place to which he is to pass, and limiting the time of his passage, shall not be deemed a vagrant, while he continues in the direct way, and within the time limited. 17 *G.* 2. *c.* 5. *s.* 3.

In what case not to gain settlements by notice.

6. No seaman employed in his majesty's service, shall have any settlement in any parish, port town, or other town, by delivery and publication of a notice in writing, unless it be after his dismission out of his majesty's service. 3 *W.* *c.* 11.

Making disturbance in the yards.

7. The treasurer, controller, surveyor, clerk of the acts, or any of the commissioners of the navy, may punish seamen and others, making disturbances in the yards or offices, and may bind them to the good behaviour, and to appear at the next assizes, or general quarter sessions, to be prosecuted for such offence. 1 *G.* *st.* 2. *c.* 25. *s.* 1, 2.

Seamen in the merchants service.

8. Concerning seamen in the merchants service, it is enacted by the 2 *G.* 2. *c.* 36. (which by the last continuance 23 *G.* 2. *c.* 26. is of force to *March* 25. 1764, *&c.*) No master of a ship shall proceed on a voyage, without agreement in writing with each mariner (apprentices excepted), to be signed by such mariner, for wages; on pain of 5 *l.* for each mariner, on conviction before one justice by the oath of one witness, to be levied by distress; for want of distress, to be committed till paid. *s.* 1, 2.

And if the mariner *deserts* after he hath signed the agreement, he shall forfeit the wages due to him at the time of deserting; and on application from the master, owner, or commander of the ship, such justice may cause him to be apprehended, and if he shall refuse to proceed on the voyage, without sufficient reason to the satisfaction of the justice, the said justice shall commit him to the house of correction, there to be kept to hard labour, not exceeding 30 days, nor less than 14 days. *s.* 3, 4.

And if any seaman absent himself from his ship without leave, he shall forfeit for every day's absence two days pay to *Greenwich* hospital, to be deducted by the master out of his wages; the same to be entred in a book, and signed by the master and two officers of the ship; and the same to be paid over to the officer who collects the 6 *d.* a month deducted out of seamens wages for the said hospital. *s.* 5, 9.

And if any seaman not entring into the king's service, shall leave his ship before he hath a discharge in writing, he shall forfeit one month's pay, in like manner. *s.* 6.

And the master shall pay the seaman's wages, if demanded, in 30 days after the ship is entred at the custom house, or at the time of discharge, which shall first happen, deducting out of such wages the aforesaid forfeitures; on pain of 20 *s.* to such seaman, to be recovered in like manner as his wages. *s.* 7.

Note;

Note; The law relating to the recovery of ſuch wages, ſo far as proviſion is made for the ſame by any act of parliament, is treated of under title Servants.

Search Warrant.

ALTHO' it is not unuſual for juſtices to grant general warrants, to ſearch all ſuſpected places for ſtolen goods, and there is a precedent in *Dalton* requiring the conſtable to ſearch *all ſuch ſuſpected places as he and the party complaining ſhall think convenient*; yet ſuch practice is generally condemned by the beſt authorities.

Thus Lord *Hale*, in his pleas of the crown, ſays, a general warrant to ſearch for felons or ſtolen goods, is not good. *H. Pl.* 93.

Mr. *Hawkins* ſays, I do not find any good authority, that a juſtice can juſtify ſending a general warrant, to ſearch all ſuſpected houſes in general for ſtolen goods: becauſe ſuch warrant ſeems to be illegal in the very face of it; for it would be extremely hard, to leave it to the diſcretion of a common officer, to arreſt what perſons, and ſearch what houſes he thinks fit; and if a juſtice cannot legally grant a blank warrant for the arreſt of a ſingle perſon, leaving it to the party to fill it up, ſurely he cannot grant ſuch a general warrant, which might have the effect of an hundred blank warrants. 2 *Haw.* 82, 84.

Again, Lord *Hale*, in his hiſtory of the pleas of the crown, expreſſeth himſelf thus; I do take it, that a general warrant to ſearch in all ſuſpected places is not good; but only to ſearch in ſuch particular places, where the party aſſigns before the juſtice his ſuſpicion, and the probable cauſe thereof; for theſe warrants are judicial acts, and muſt be granted upon examination of the fact. 2 *H. H.* 150.

And therefore, he ſays, he takes it that thoſe general warrants dormant, which are many times made before any felony committed, are not juſtifiable, for it makes the party to be in effect the judge; and therefore ſearches made by pretence of ſuch general warrants, give no more power to the officer or party, than what they may do by law without them. 2 *H. H.* 150.

Likewiſe, upon a *bare ſurmiſe*, a juſtice cannot make a warrant to break any man's houſe, to ſearch for a felon, or for ſtolen goods; for the juſtices being created by act of parliament, have no ſuch authority granted to them by any act of parliament; and it would be full of inconvenience, that it ſhould be in the power of any juſtice of the peace, being a judge of record, upon a bare ſuggeſtion to break the houſe of any perſon, of what ſtate, quality, or degree ſoever, either in the day or night, upon ſuch ſurmiſes. 4 *Inſt.* 177.

But in case of a complaint, and oath made, of goods stolen, and that the party suspects the goods are in such a house, and shews the cause of his suspicion; the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods, and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them, and further to abide such order as to law shall appertain. 2 *H. H.* 113, 150.

But in that case, Lord *Hale* says, it is convenient, that such warrant do require the search to be made in the day time; and tho' I will not affirm (says he) that they are unlawful without such restriction, yet they are very inconvenient without it; for many times under pretence of searches made in the night, robberies and burglaries have been committed, and at best it creates great disturbance. 2 *H. H.* 150.

But in case not of probable suspicion only, but of positive proof, it is right to execute the warrant in the night time, lest the offenders and goods also be gone before morning. *Barl. Search War.*

Furthermore, such warrant ought to be directed to the constable, or other publick officer, and not to any private person; tho' it is fit the party complaining should be present and assistant, because he knows his goods. 2 *H. H.* 150.

So much for *granting* a search warrant; Next touching the *execution* of it.

Whether the stolen goods are in the suspected house or not, the officer and his assistants in the day time may enter, the doors being open, to make search, and it is justifiable by this warrant. 2 *H. H.* 151.

If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door. 2 *H. H.* 151.

If the goods be not in the house, yet it seems the officer is excused, that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there, till search made; but it seems the party that made the suggestion is punishable in such case; for as to him the breaking of the koor is *in eventu* lawful or unlawful, to wit, lawful if the goods are there, unlawful if not there. 2 *H. H.* 151.

On the *return* of the warrant executed, the justice hath these things to do;

As touching the *goods* brought before him, if it appear they were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hand of the sheriff or constable, to the end the party robbed may proceed, by indicting and convicting the offender, to have restitution. 2 *H. H.* 151.

As touching the *party* that had the custody of the goods; if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as

a witness

a witness against him that sold them; if it appear he was knowing they were stolen, he must be committed or bound over to answer the felony. 2 *H. H.* 152.

Form of a search warrant.

Westmorland. { To the constable of ———.

— WHEREAS *it appear to me* J. P. *esquire, one of the justices of our lord the king, assigned to keep the peace in the said county, by the information on oath of* A. I. *of* ——— *in the county aforesaid, yeoman, that the following goods, to wit,* ——— *have within two days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away, out of the house of the said* A. I. *at* ——— *aforesaid, in the county aforesaid; and that the said* A. I. *hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling house of* A. O. *of* ——— *in the said county, yeoman: These are therefore, in the name of our said lord the king, to authorize and require you, with necessary and proper assistants, to enter in the day time into the said house of the said* A. O. *at* ——— *aforesaid, in the county aforesaid, and there diligently to search for the said goods; and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said* A. O. *before me, or some other of the justices of our said lord the king, assigned to keep the peace in the county aforesaid, to be disposed of and dealt withal according to law. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Self defence. See **Homicide.**
Self murder. See **Homicide.**

Servants.

Under this title are also comprehended labourers, journeymen, artificers, and other workmen.

Concerning the *settlement* of servants, see title **Poor.**

I. Who may be compelled to serve, and for what term.

II. Rating of wages.

III. Time of working for labourers.

IV. Working in harvest.

V. Leaving work unfinished.

VI. Testimonial.

VII. Servant fleeing into another shire.

VIII. Servant assaulting his master.

IX. How far the master is allowed to beat his servant.

X. How far the master may beat another in defence of his servant, or the servant in defence of his master.

XI. Servants firing houses.

XII. Servant stealing his master's goods.

XIII. Disputes between silk masters and their workmen.

XIV. Disputes between clothiers and their workmen.

XV. Disputes between masters and servants in the woollen, linen, fustian, cotton, and iron manufactures, by several statutes.

XVI. Disputes between masters and their workmen in the leathern manufactures, by the 13 G. 2. c. 8.

XVII. Disputes between masters and their workmen in the making of hats, or in the woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silken manufactures, by the 22 G. 2. c. 27.

XVIII. Disputes between masters and their workmen in the manufacture of clocks and watches, by the 27 G. 2. c. 7.

XIX. Disputes between masters and servants in husbandry, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, by the 20 G. 2. c. 19.

XX. Shipmasters and their seamen.

XXI. Taylors and their workmen within the bills.

XXII. Shoemakers and their workmen within the bills.

XXIII. How far the master is answerable for the servant.

I. Who

I. Who may be compelled to serve, and for what term.

1. NO person shall retain, or be retained, to work for any less term than one whole year, in any of the crafts of clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, sheremen, dyers, hosiers, taylors, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, curriers, saddlers, spurriers, turners, cappers, hatmakers or feltmakers, bowyers, fletchers, arrow head makers, butchers, cooks, or millers. 5 *El. c.* 4. *s.* 3. Who compellable to serve in trades.

And every person unmarried, and every married person being under the age of 30 years, and having been brought up in any of the said trades, or that hath used any of them by the space of 3 years or more; and not having an estate of inheritance or for life of 40*s.* a year, nor worth 10*l.* in goods, and so allowed by two justices of the county where he hath most commonly inhabited for one year, under their hands and seals, or by the mayor of a town corporate and two aldermen, or (if there are no aldermen) two discreet burgesses; nor being retained with any person in husbandry, nor in any the aforesaid trades; nor being lawfully retained in houshold, or in any office with any nobleman, gentleman, or other according to law; nor having a convenient farm or other holding in tillage; —— shall during the time that he shall be so unmarried, or under the said age of 30 years, on request made by any person using the art or mistery wherein the said person hath been exercised, be retained and serve, on pain as hereafter followeth. *s.* 11.

And no person which shall retain any servant, shall put away his said servant, and no person retained according to this statute shall depart before the end of his term, unless it be for some reasonable cause, to be allowed before one justice or mayor to whom the party grieved shall complain: And no master shall put away any such servant at the end of his term, nor shall any such servant depart at the end of his term without one quarter's warning, on pain hereafter ensuing. *s.* 5, 6.

2. Every person between the age of 12 and 60, not being lawfully retained, nor apprentice with any fisherman or mariner haunting the seas; nor being in service with any kidder or carrier of corn, grain, or meal for provision of the city of *London*; nor with any husbandman in husbandry; nor in any city, town corporate, or market town, in any the arts limited by this statute to have apprentices; nor being retained by the year, or half year at least; for getting, melting, fining, working, trying, making of any silver, tin, lead, iron, copper, stone, sea coal, stone coal, moor coal, or cherk coal; nor being occupied in the making of glass; nor being a gentleman born, nor being a student or scholar in any of the universities, or school; nor having an estate of inheritance, or for term of life, of 40*s.* a year; nor worth 10*l.* in goods; nor having a father or mother then living, or other ancestors, whose heir apparent he is, having lands of 10*l.* a year, or goods worth 40*l.*; nor being a necessary or convenient officer In husbandry.

or ſervant lawfully retained as aforeſaid; nor having a convenient farm or holding, whereon to employ his labour; nor being otherwiſe lawfully retained according to the true meaning of this ſtatute, —— ſhall be compelled to be retained to ſerve in huſbandry by the year, with any perſon that keepeth huſbandry, and will require any ſuch perſon ſo to ſerve, within the ſame ſhire where he ſhall be ſo required. 5 *El. c.* 4. *ſ.* 7.

And if any perſon, after he hath retained any ſervant, ſhall put him away before the end of his term, unleſs it be for ſome reaſonable cauſe, to be allowed as is aforeſaid; or ſhall put him away at the end of his term, without a quarter's warning; unleſs he can prove by two witneſſes ſuch reaſonable cauſe, or ſuch quarter's warning, before the judges of aſſize, juſtices of the peace in ſeſſions, or the mayor and two aldermen (or two diſcreet burgeſſes if there are no aldermen) in corporations, —— he ſhall forfeit 40*s.* *ſ.* 8.

Penalties.

3. And if any ſervant retained according to this ſtatute ſhall depart from his ſervice before the end of his term, unleſs it be for ſome reaſonable cauſe to be allowed as aforeſaid, or at the end of his term depart without a quarter's warning before two witneſſes; or if any perſon bound to ſerve in huſbandry or other arts above remembred, by the year or otherwiſe, do on requeſt refuſe to ſerve for the wages to be limited, by this ſtatute; or promiſe to ſerve, and do not ſerve, —— then, on complaint and conviction before two juſtices, or mayor and two aldermen (or two diſcreet burgeſſes where there are no aldermen) he ſhall be committed to ward until he ſhall be bound to ſerve and continue for the wages that ſhall be then limited; and to be diſcharged upon his delivery, without any fee to the gaoler. 5 *El. c.* 4. *ſ.* 9.

And the forfeitures not otherwiſe appointed by this act, ſhall be half to the king, and half to him that ſhall ſue in any of the king's courts of record, or before the juſtices of oyer and terminer, or before any other juſtices before remembred; and the ſaid juſtices, or two of them (1 *Q.*) and the ſaid mayors or other head officers, ſhall have power to hear and determine all offences againſt this ſtatute, as well upon indictment in the ſeſſions of the peace, as upon information, action of debt, or bill of complaint; and ſhall yearly in *Michae'mas* term eſtreat the forfeitures into the exchequer, in like manner as other eſtreats. *ſ.* 39.

And all fines and forfeitures which ſhall ariſe by reaſon of any offences in this act, within any city or town corporate, ſhall be levied by ſuch perſon as ſhall be appointed by the mayor or other head officer, to the uſe of the ſame city or town corporate, as other fines and forfeitures by the charter. *ſ.* 45.

Women compellable to ſerve.

4. Two juſtices (or the mayor or other head officer of a town corporate, and two aldermen, or two diſcreet burgeſſes if there be no aldermen) may appoint any ſuch woman as is of the age of 12 years, and under 40, and unmarried, and forth of ſervice, as they ſhall think meet, to ſerve, or be retained to ſerve by the year, or by the week or day, for ſuch wages, and in ſuch reaſonable ſort and manner as they ſhall think meet; and if any ſuch woman ſhall refuſe ſo to ſerve, they may commit her to ward, until

until ſhe ſhall be bounden to ſerve as is aforeſaid. 5 *El. c.* 4. *ſ.* 24.

And if a woman who is a ſervant ſhall marry, yet ſhe muſt ſerve out her time, and her huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58. *Wood* 89.

5. If a perſon retain a ſervant generally, without expreſſing any time, the law ſhall conſtrue it to be for one year, for that retainer is according to law. 2 *Inſt.* 42. Retainer to be for a year.

And if a man retaineth another, except the retainer be according to the ſtatute, it ſeemeth to be void; unleſs it be by indenture, and then being by deed, he is bound by his covenant. *Dalt. Old Ed. c.* 31.

6. By the retainer, the ſervant is in ſervice preſently by the law, altho' he cometh not iuto his maſter's ſervice indeed. *Dalt. c.* 58. Retainer is the beginning of ſervice.

7. If a ſervant be within age, his agreement with his maſter to his diſadvantage ſhall not prejudice him. *Dalt. c.* 58. Infant hiring.

8. If a married man and his wife do bind themſelves to ſerve, they ſhall be compelled to ſerve according to their covenant or agreement. *Dalt. c.* 58. Married perſon hiring.

9. If a ſervant retained for a year, happen within the time of his ſervice to fall ſick, or to be hurt or diſabled by the act of god, or in doing his maſter's buſineſs; yet the maſter muſt not therefore put ſuch ſervant away, nor abate any part of his wages for ſuch time. *Dalt. c.* 58. Servant falling ſick.

II. Rating of Wages.

1. The juſtices of every ſhire, riding, and liberty, or the more part of them, being then reſiant within the ſame, and the ſheriff if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any juſtice of the peace within the limits of the ſaid city or town corporate, and of the ſaid corporation, ſhall yearly at *Eaſter* ſeſſions, or within 6 weeks next after, aſſemble, and call unto them ſuch diſcreet and grave perſons as they ſhall think meet, and having reſpect to the plenty or ſcarcity of the time, and other circumſtances, ſhall have authority to limit, rate, and appoint the wages as well of ſuch the ſaid artificers, handicraftſmen, huſbandmen, or any other labourer, ſervant, or workman, whoſe wages in time paſt have been by any law or ſtatute rated and appointed, as alſo the wages of all other labourers, artificers, workmen, or apprentices of huſbandry, which have not been rated, as they ſhall think meet by their diſcretions, to be rated, limited, or appointed by the year, or by the day, week, month, or otherwiſe, with meat and drink, or without meat and drink, and what wages every workman or labourer ſhall take by the great, for mowing, reaping, or threſhing of corn and grain, or for mowing or making of hay, or for ditching, paving, railing, or hedging, by the rod, pearch, lugg, yard, pole, rope, or foot, and for any other kind of reaſonable labour or ſervice. 5 *El. c.* 4. *ſ.* 15. Rating wages.

And by the 1 *J. c.* 6. The justices, or the more part of them, resiant in any riding, liberty, or division, where the sessions are severally kept, shall have power to rate the wages within such division, as if the same were done in the general sessions for the county. *s.* 5.

And by the same statute of 1 *J. c.* 6. The said act of 5 *El.* shall extend to the rating of wages of all labourers, weavers, spinsters, and workmen or workwomen whatsoever, either working by the day, week, month, year, or taking any work by the great or otherwise. *s.* 3.

But no clothier being a justice of the peace in any precinct or liberty, shall be a rater of wages for the making of cloth; and if there be not above two justices in such precinct, but such as are clothiers, the wages shall be rated by the major part of the common council of such precinct, and such justices (if any there be) as are not clothiers. *id. s.* 9.

And if any justice resiant within the county, or mayor, shall be absent at the rating of wages, and not hindred by sickness or other lawful cause, to be allowed by the justices then assembled for rating of wages, upon the oath and affidavit of some credible person, he shall forfeit to the king 10*l* to be recovered in the sessions or other court of record, by indictment or otherwise. 5 *El. c.* 4. *s.* 17.

And the justices shall yearly, between *Sep.* 29. and *Dec.* 25. and between *March* 25. and *June* 24. make special and diligent enquiry of the good execution of this statute, and punish defaulters; and shall have for every day that they sit about the execution thereof (not exceeding 3 days at a time) 5 *s.* each, out of the forfeitures due to the king. *s.* 37, 38.

Rates to be proclaimed.

2. By the aforesaid act of 5 *El.* the rates were to be certified into the chancery; but by the 1 *J. c.* 6. they need not to be certified into the chancery, but shall be kept amongst the records of the county or town corporate. *s.* 8.

And after the said rates are made and ingrossed in parchment, under the hands and seals of the persons having authority to rate the same, the sheriff, or mayor, may cause proclamation thereof to be made, in so many places as to them shall seem convenient; and every person shall be bound to observe the same. *id. s* 6.

Giving more than is rated.

3. If any person upon the proclamation published, shall directly or indirectly, retain or keep any servant, workman, or labourer, or shall give any more or greater wages, or other commodity, than shall be so appointed in the said proclamation; he shall on conviction before any of the justices or other head officers above remembred, be imprisoned for ten days without bail, and shall forfeit 5*l.* half to the king, and half to him that shall sue before the said justices in their sessions 5 *El. c.* 4. *s.* 18.

But yet masters may reward a well deserving servant, over and above his wages, according as he shall deserve, so it be not by way of promise or agreement upon his retainer. *Dalt. c.* 58.

Taking more.

4. And every person that shall be so retained and take wages contrary to the said statute of the 5 *El.* or to the said proclamation, and shall be thereof convicted before the justices aforesaid,

or any two of them, or before the mayor or other head officers aforesaid, he shall be imprisoned for 21 days without bail. 5 *El. c.* 4. *s.* 19.

5. And every retainer, promise, gift, or payment of wages, or other thing, contrary to the said act, and every writing and bond to be made for that purpose, shall be void. 5 *El. c.* 4. *s.* 23. Contract to the contrary, void.

6. If any clothier, or other, shall refuse to pay so much wages to their weavers, spinsters, workmen, or workwomen, as shall be rated; and be convicted thereof by confession, or oath of two witnesses, at the assizes, or sessions, or before any two justices (1 *Q.*); he shall forfeit 10 *s.* to the party grieved, to be levied by distress and sale. 1 *J. c.* 6. *s.* 7. Paying less than is rated.

7. *M.* 1 *An. Q.* and *Gouche.* An order was made by the justices for payment of wages, for work and labour in husbandry: The exception was, That it did not appear to be statute wages, and such only are within their jurisdiction. By the court; Tho' the statute gives them a power only to set the rate for wages, and not to order payment; yet grafting hereupon, they have also taken upon them to order payment, and the courts of law are indulgent in remedies for wages, and therefore they would intend it such wages as were within the statute, unless the contrary appear upon the face of the order. 2 *Salk.* 441. Ordering the payment of wages.

And in the case of *K.* and *Gregory*, 2 *Salk.* 484. There was an order to pay 40 *s.* for wages generally; and because it was not said for wages in husbandry, it was moved to quash it, for that the justices can only settle wages in husbandry: But by the court; We will intend it for such wages, since the contrary does not appear.

But in the case of *K.* and *Helling*, *M.* 3 *G.* There was an indictment for not paying servants wages, reciting an order of two justices, whereby it appeared, that 9 *l.* was due, which the defendant refused to pay, having had notice of the order. It was moved to quash the indictment, because it doth not set out the labour of the servant, and is only generally for wages; the justices have only jurisdiction in case of husbandry; and the order ought to shew, that this was a matter within their jurisdiction. By *Eyre* J. the practice is, if an order be for paying wages, it is supposed to be such as the justices have power over. But *Parker* Ch. J. and *Pratt* J. were of another opinion. And in the next term following the indictment was quashed. *Str.* 8.

And in the case of *K.* and *Cleg*, *M.* 8 *G.* It was said by *Fortescue* J. that in the case of servants wages, although jurisdiction is given only in husbandry, yet orders have been held good, where it did not appear that the service was in husbandry; for the court said they would intend it so, unless the contrary appeared. But by *Pratt* Ch. J. This was always wondred at, and in my lord *Parker*'s time it was actually contradicted in the case of *K.* and *Helling*. *Str.* 475.

In *Bycraft*'s case, 5 *Mod.* 140. A justice made an order for payment of a *footman*'s wages; but in an action brought against him, the plaintiff recovered 30 *l.* damages.

M. 8 *An. 2.* and *Cecill.* An order upon a maſter to pay wages in huſbandry, was quaſhed, becauſe it was made upon the ſervant's oath, which is againſt law, and no power given in the ſtatute to admit ſuch oath as evidence. L. *Raym.* 1305.

But by other ſtatutes hereafter following, ſuch oath is allowed as evidence; but upon this ſtatute it was not neceſſary, becauſe in order to intitle the ſervant to wages, he needed not to prove how much his maſter had agreed to pay him, for that was fixed by the juſtices, but only how long he had ſerved, and then the wages followed of courſe; and this might be proved by many others as well as by himſelf.

III. Time of working for labourers.

All artificers and labourers, being hired for wages, by the day, or week, ſhall betwixt the midſt of *March* and *September*, be and continue at their work, from 5 in the morning till after 7 at night (except in the time of breakfaſt, dinner, or drinking, which ſhall not exceed two hours and an half in a day, that is to ſay, at every drinking one half hour, for his dinner one hour, and for his ſleep, when he is allowed to ſleep, that is, from the midſt of *May* to the midſt of *Auguſt*, half an hour at the moſt, and at every breakfaſt one half hour:) And all the ſaid artificers and labourers, between the midſt of *September* and the midſt of *March*, ſhall be and continue at their work, from the ſpring of the day in the morning, until night, except it be in the time afore appointed for breakfaſt and dinner; on pain to forfeit 1 *d.* for every hour's abſence, to be deducted out of his wages. 5 *El. c.* 4. *ſ.* 12.

IV. Working in harveſt.

1. In the time of hay or corn harveſt, the juſtices of the peace, and every of them, and alſo the conſtable or other head officer of every townſhip, upon requeſt, and for avoiding of the loſs of any corn, grain, or hay, ſhall cauſe all ſuch artificers and perſons as be meet to labour, by the diſcretions of the ſaid juſtices or conſtables, or other head officers, or by any of them, to ſerve by the day, for the mowing, reaping, ſhearing, getting, or inning of corn, grain, and hay, according to the ſkill and quality of the perſon; and that none of the ſaid perſons ſhall refuſe to do, on pain to ſuffer impriſonment in the ſtocks, by the ſpace of two days and one night: And the conſtable of the town, or other head officer, on complaint to him made, ſhall ſet him in the ſtocks accordingly, on pain of 40 *s.* half to the king, and half to him that ſhall ſue in the ſeſſions, or other court of record; and if it is in a town corporate, then to the uſe of ſuch town, as other fines by the charter. 5 *El. c.* 4. *ſ.* 22.

Provided, that all perſons of the counties where they have accuſtomed to go into other ſhires for harveſt work, and having at that time no harveſt work ſufficient in the ſame town or county where they dwelt in the winter laſt paſt, bringing with them a teſtimonial under the hand and ſeal of one juſtice of the ſhire, or

other

other head officer of the town or place that they come from, testifying the same, for which he shall pay not above 1 *d.* (other than such persons as shall be retained in service) may repair, in harvest of hay or corn, into any other county or place for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harvest works, as they might have done before the making of this act. *s.* 23.

2. And by the 13 & 14 *C.* 2. *c.* 12. A person may go abroad to work in harvest, carrying with him a certificate from the minister and one churchwarden or overseer, that he hath a dwelling house or place in which he inhabits, and hath left wife and children, or some of them there (or otherwise as his condition shall require) and declaring him an inhabitant there. *s.* 3.

And by the vagrant act of the 17 *G.* 2. Persons carrying with them such certificate, shall not be liable to be apprehended as vagrants.

V. Leaving work unfinished.

Every artificer and labourer, that shall be lawfully retained in and for the building or repairing of any church, house, ship, mill, or other piece of work taken in great, in task, or in gross, or that shall take upon him to make or finish any such work, shall continue and not depart from the same, unless it be for not paying of his wages or hire agreed on, or otherwise lawfully taken or appointed to serve the king, or for other lawful cause, or without licence of the master or owner of the work, or of him that hath the charge thereof, before the finishing of the said work, on pain of imprisonment for a month without bail or mainprise, and the forfeiture of 5 *l.* to the party from whom he shall so depart, for the which the said party may have his action of debt in any of the king's courts of record, over and besides such ordinary costs and damages as may or ought to be recovered by the common laws, for such offence. 5 *El. c.* 4. *s.* 13.

And no other artificer or labourer, retained in any service, to work for the king, or any other person, shall depart from his said majesty, or from such other person, until the work be finished, if the person so retaining the artificer or labourer so long will have him, and pay him his wages; on pain of imprisonment for one month. *s.* 14.

VI. Testimonial.

None of the said persons retained in husbandry, or in any the arts above remembred, after the time of his retainer expired, shall depart forth of one city, town, or parish, to another; nor out of the lathe, rape, wapentake, or hundred; nor out of the county where he last served, to serve in any other city, town corporate, lathe, rape, wapentake, hundred, or county; unless he have a testimonial under the seal of the said city or town corporate, or of the constable or other head officer, and of two other honest housholders of the city, town, or parish where he last served: Which testimonial shall be in this form,

Memorandum,

Memorandum, That A. B. *late servant to* C. D. *of* E. *husbandman, or taylor,* &c. *in the said county, is licensed to depart from his said master, and is at his liberty to serve elsewhere, according to the statute in that case made and provided. In witness whereof,* &c. *Dated the day, month, year, and place,* &c. *of the making thereof:*

Which testimonial shall be delivered to the said servant, and also registred by the minister of the parish where the master dwells, taking 2 *d.* for the same. 5 *El. c* 4. *s.* 10

And no person that shall depart out of a service, shall be retained or accepted into any other service, without shewing (before his retainer) such testimonial, to the chief officer of the town corporate, and in every other town and place, to the constable, curate, churchwarden, or other head officer; on pain that every such servant so departing without such testimonial, shall be imprisoned till he procure one; which if he cannot do in 21 days, he shall be whipped and used as a vagabond, according to the laws in such case provided; and every person retaining such servant, without shewing such testimonial, shall forfeit 5 *l.* half to the king, and half to him that shall sue in the sessions or other court of record; and if any such person be taken with a counterfeit testimonial, then to be whipped as a vagabond. *s.* 11.

By the common law, if a man retained another man's servant, not knowing that he was retained with him, this ignorance excused him of the offence; but now the master may, and must take notice, whether he hath a testimonial or no; otherwise, if he hath no testimonial, such master is liable by this statute to the penalty of 5 *l.* *Dr. & St.* 149.

And it were to be wished, that this good law concerning the testimonial were enforced and put in due execution; the want whereof is the only adequate cause of the excessive dearness and insolence of servants which is now so universally complained of; because it renders all rating of wages utterly vain and ineffectual; for if the wages are limited in one shire, the effect of that is no more than driving the servants into another shire where the wages are not rated: which can only be prevented by a general concurrence in not suffering them to depart, or not receiving them, without such licence or testimonial.

VII. Servant fleeing into another shire.

If any servant of husbandry, or of any art, science, or occupation aforesaid, flee into another shire, it shall be lawful for the justices of the peace, and the said mayors or other head officers being justices of the peace, to issue writs of *capias*, directed to the sheriffs of the counties, or other head officers of the places whither he shall flee, to take his body, returnable before them at what time shall please them; so that if they come by such process, they be put in prison till they shall find sufficient surety well and honestly to serve their masters. 5 *El. c.* 4. *s.* 47.

And

And by the 24 *G.* 2. *c.* 55. If a juſtice ſhall iſſue a warrant againſt ſuch perſon, and he ſhall eſcape into another ſhire; the conſtable or other perſon, on having the warrant indorſed by a juſtice in ſuch other ſhire, may arreſt him there, and carry him before a juſtice in ſuch other ſhire, if the offence is bailable, to find bail, or elſe ſhall carry him back before a juſtice in the ſhire from whence the warrant did firſt iſſue.

VIII. Servant aſſaulting his maſter.

If any ſervant, workman, or labourer, ſhall wilfully or maliciouſly make an aſſault or affray upon his maſter or miſtreſs, or upon any other having charge or overſight of ſuch ſervant or labourer, or over the work wherein he is hired to work, and ſhall be thereof convicted before any two juſtices, or other head officer aforeſaid, by confeſſion, or oath of two witneſſes, he ſhall be impriſoned for a year, or leſs, by the diſcretion of two juſtices out of a town corporate, and in a town-corporate of the mayor or other head officer with two others of the diſcreeteſt perſons of the ſame corporation: And if the offence ſhall require further puniſhment, then to receive ſuch other open puniſhment ſo as it extend not to life or limb, as the juſtices in ſeſſions, or the mayor or other head officer, and ſix or four at leaſt of the diſcreeteſt perſons of the corporation, ſhall think convenient for the quality of the offence. 5 *El. c.* 4. *ſ.* 21.

IX. How far the maſter is allowed to beat his ſervant.

The maſter is allowed by law, with moderation to chaſtiſe his ſervant. *Dalt. c.* 58.

And where a maſter, in correcting his ſervant, happens to occaſion his death, it ſhall be deemed homicide by miſadventure; yet if in his correction he be ſo barbarous, as to exceed all bounds of moderation, and thereby occaſion the ſervant's death, it is manſlaughter at the leaſt; and if he make uſe of an inſtrument improper for correction, and apparently indangering the ſervant's life, as an iron bar, or ſword, or kick him to the ground, and then ſtamp on his belly and kill him, it is murder. 1 *Haw.* 73, 74.

And if the ſervant ſhall depart out of his maſter's ſervice, and the maſter happen after to lay hold of him, yet the maſter in this caſe may not beat or forcibly compel his ſaid ſervant againſt his will to return or tarry with him, or do his ſervice; but either he muſt complain to the juſtices, for his ſervant's departure, or he may have an action of covenant againſt his ſervant. *Dalt. c.* 121.

X. How

X. *How far the maſter may beat another in defence of his ſervant, or the ſervant in defence of his maſter.*

According to ſome opinions, a maſter ſhall not forfeit a recogniſance of the peace, for beating another in defence of his ſervant, nor the ſervant for beating another in defence of his maſter. 1 *Haw.* 131.

But in the caſe of *Leeward* and *Baſiler, M.* 7 *W.* It was held by the court, that a ſervant may juſtify an aſſault in defence of his maſter, but not a maſter in defence of his ſervant; becauſe he might have an action for the loſs of his ſervice. 1 *Salk.* 407.

XI. *Servants firing houſes.*

If any menial or other ſervant, thro' negligence or careleſſneſs, ſhall fire or cauſe to be fired any dwelling houſe or out houſe, and be convicted thereof by oath of one witneſs, before two juſtices, he ſhall forfeit 100 *l.* to the churchwardens, to be diſtributed amongſt the ſufferers by ſuch fire; and if he ſhall not pay the ſame immediately, on demand of the churchwardens, he ſhall be committed by the ſaid juſtices to ſome workhouſe or houſe of correction for 18 months, there to be kept to hard labour. 6 *An. c.* 31. *ſ.* 3.

XII. *Servant ſtealing his maſter's goods.*

By the 21 *H.* 8. *c.* 7. *If any ſervant to whom any goods ſhall by his maſter or miſtreſs be d livered to be kept, ſhall go away therewith, to the intent to ſteal the ſame; or, being in his maſter or miſtreſs's ſervice, without his or her aſſent, ſhall imbezil or otherwiſe convert the ſame to his own uſe, with like purpoſe to ſteal it, if the ſame be of the value of* 40 s. *or above, he ſhall be guilty of felony; but this not to extend to any apprentice, or any perſon within the age of* 18 *years.*

By his maſter or miſtreſs] If the maſter's wife deliver goods of the maſter, to the ſervant to keep, and he goes away with them, it ſeems this is within the ſtatute, for he hath them by delivery of his miſtreſs; and the maſter's wife is as well his miſtreſs, as if ſhe were ſole. 1 *H. H.* 668.

Be delivered to be kept] This ſtatute was introductive of a new law, when the goods were actually *delivered* to the ſervant that goes away with them; for where there is ſuch a delivery, it could not at the common law be a felony. 1 *H. H.* 667.

But yet a ſervant may be guilty of felony at common law, if he *take* the goods of his maſter feloniouſly, nay, tho' they be goods under his charge, as a ſhepherd, butler, and the like; and for this he may be indicted at this day as a felony at common law: and of this felony at common law an apprentice, or ſervant under the age of 18 years, may be guilty, and indicted thereof at common law. 1 *H. H.* 667.

And

And therefore tho' this ſtatute exempt an apprentice or ſervant under 18, from the pain of felony enacted *de novo* by this ſtatute, namely, where goods are actually delivered to him, yet it leaves him in the ſame condition as to any felony at common law, as if he were not excepted; and therefore if a butler or ſhepherd, under the age of 18 years, or if an apprentice take away his maſter's goods feloniouſly, without an actual delivery, tho' they are under the value of 40*s.* he is indictable of felony at common law. 1 *H. H.* 667, 668.

If a man delivers to his ſervant the key of his chamber door, and the ſervant taketh away his maſter's goods in the chamber (above the value of 12 *d.*) this is felony at the common law, for the goods were *not delivered.* *Dalt. c.* 155.

If a man appoints his ſervant to take and carry corn to market, and to take his horſe to carry the ſame upon, and the ſervant goeth away with the corn or horſe; this is felony in the ſervant, if the goods he ſo goeth away with, be all to the value of 40*s.* *Dalt. c.* 155.

But if the ſervant waſtefully conſumeth the goods, and returneth again to his maſter, this is no felony. *Dalt. c.* 155.

If the maſter deliver an obligation to his ſervant, to receive the money thereby due, and the ſervant receive the money, and goeth away with the ſame, with intent to ſteal it; this is no offence within this ſtatute, becauſe he had not the money of the delivery of his maſter. 3 *Inſt.* 105.

So if the maſter deliver to his ſervant wares or merchandizes to ſell, and he ſelleth the ſame, and goeth away with the money as before, this is no offence within this ſtatute for the cauſe aforeſaid. 3 *Inſt.* 105.

So if the ſervant receiveth above 40*s.* of his maſter's rents, and run away rherewith, it is no felony; for the ſtatute is, where the maſter delivereth it to keep. *Dalt. c.* 155.

But it is held, that if the maſter deliver to the ſervant 20*l.* in ſilver, to change it into gold at the goldſmith's, or leather to make ſhoes, and he run away with the gold or ſhoes, it is felony. 1 *H. H.* 668.

Shall be guilty of felony] But not without benefit of clergy. But by the 12 *An ſt.* 1. *c.* 7. Every perſon who ſhall ſteal goods to the value of 40*s.* out of any dwelling houſe, altho' it be not broken open, ſhall be guilty of felony without benefit of clergy: But this not to extend to apprentices under 15 years of age.

And in *Joſhua Cornwall*'s caſe, *M.* 4 *G.* 2. it was adjudged, that a ſervant may be guilty of burglary with reſpect to his maſter's goods, although he did not break and enter, nor take, nor carry the goods away. Which was thus: The ſervant in the night opened the ſtreet door, and let in the thief, and ſhewed him the ſide board, from whence he took the plate; then the ſervant opened the door, and let him out, but did not go out with him, but went to bed. Upon the trial it was doubted, whether this was burglary in the ſervant, he not going out with the other; wherefore it was ordered to be found ſpecially. And afterwards at a

meeting

meeting of all the judges at *Serjeants-Inn*, they were all of opinion that it was burglary in both. And upon report of this opinion the next ſeſſions, the defendant was executed. *Str.* 881.

XIII. Diſputes between ſilkmaſters and their workmen.

1. By the 13 & 14 *C.* 2. *c.* 15 Every ſilk winder and doubler, who ſhall unjuſtly, or deceitfully and falſly purloin, imbezil, pawn, ſell, or detain any part of ſilk delivered to them to wind or double, in every ſuch caſe, as well the winder or journeyman ſo offending, as the buyer and receiver thereof, being lawfully convicted, by confeſſion, or oath of one witneſs, before one juſtice (or mayor), ſhall render to the party grieved ſuch ſatisfaction for his damage and loſs and charges, as the juſtice ſhall order. *ſ.* 6.

But no more damages ſhall be given, than the party grieved ſhall prove he is damnified, and hath expended; and if the party ſhall not be able, or do not make recompence in 14 days after conviction, he ſhall for the firſt offence be apprehended and whipped, or ſet in the ſtocks where the offence was committed, or in ſome market town near, in the ſaid county; and for the ſecond offence, to incur the like, or ſuch further puniſhment by whipping or being put in the ſtocks, as ſuch juſtice ſhall think convenient. *ſ.* 7.

2. And by the 20 *C.* 2. *c.* 6. If any ſilk winder or doubler ſhall be found faulty, in unjuſtly, deceitfully, or falſly purloining, imbezilling, pawning, ſelling, or detaining any ſilk committed to his truſt; any juſtice, or mayor, ſhall immediately on conviction by confeſſion, or oath of one witneſs, commit him to priſon or houſe of correction, till ſatisfaction be given to the party wronged, or puniſhment inflicted as by the 13 & 14 *C.* 2. is appointed.

3. And by the 8 & 9 *W.* *c.* 36. Every perſon that ſhall embezil, pawn, ſell, or detain any ſilk delivered to him to be wrought, or after it is wrought up, and alſo the receiver and buyer thereof, or ſuch as take the ſame to pawn, ſhall be ſubject to all the penalties of the 13 & 14 *C.* 2. *c.* 15. and the 20 *C.* 2. *c.* 6.

XIV. Diſputes between clothiers and their workmen.

1. By the 4 *Ed.* 4. *c.* 1. Clothmakers ſhall pay to the carders, and ſpinſters, and other labourers, their wages in money and not in goods, and deliver wool to them to be wrought according to the due weight thereof; on pain of forfeiting treble value of the wages, and for every delivery of exceſſive weight 6*d.* *ſ.* 5.

And every carder, ſpinſter, weaver, fuller, ſhearman, and dyer ſhall duly perform his duty in his occupation, on pain of double damages to the party grieved. *ſ.* 6.

And every juſtice of the peace, mayor, maſter, warden, bailiff, portreve, conſtable of hundred, and ſteward of leet, may hear and determine the ſame, and commit the offender to the next

next gaol, till the ſaid duties, forfeitutes, and damages be paid. And any perſon not grieved may inform; in which caſe, the offender ſhall forfeit to the king, or to ſuch perſon as ſhall be intitled to fines or amerciaments, 3 *s.* 4 *d.* And they may grant like proceſs, as juſtices of the peace may do for ſurety of the peace, without any fee to be taken for the execution of their offices in this behalf. *ſ.* 6.

2. By the 7 *J. c.* 7. Every ſorter, carder, kember, ſpinſter, and weaver, who ſhall unjuſtly, falſly, or deceitfully convey, imbezil, purloin, ſell, or detain any part of the wool or yarn delivered by any clothier, maker of bays, ſays, or by any other perſon making ſuch cloths or ſtuffs, and alſo the buyer and receiver thereof, knowing the ſame, being thereof convicted by confeſſion, or oath of one witneſs, before two juſtices, or before the mayor and one of the aldermen or moſt ſubſtantial perſons of a town corporate, ſhall make ſuch ſatisfaction for damages, as the ſaid juſtices or chief officers ſhall appoint; and if the offender ſhall not by them be thought ſufficient, or do not make ſuch ſatisfaction, he ſhall for the firſt offence be apprehended and whipped, or ſet in the ſtocks where the offence is committed, or in ſome market town near in the ſame county; and for the ſecond offence, ſhall incur the like or ſuch further puniſhment by whipping, or being put in the ſtocks, as the ſaid juſtices or chief officers ſhall think convenient. *ſ.* 2.

And every ſpinner that ſhall receive any wool to be ſpun into yarn, for any clothier dwelling in *Cogſhall*, *Bocking*, *Braintree*, *Halſteed*, *Wittam*, or *Colcheſter*, and ſhall deliver back the yarn by any reel ſhorter than two yards about, ſhall be ſubject to the like puniſhment. *ſ* 4.

3. By the 10 *An. c.* 16. Every clothier, clothworker, cardmaker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 20 *s.* on conviction in 30 days, before one juſtice, on oath of one witneſs, half to the informer, and half to the poor: If he ſhall not pay in 14 days after conviction, the ſame to be levied by the conſtable by warrant of ſuch juſtice, by diſtreſs; and where no ſufficient diſtreſs can be found, to be committed to the gaol or houſe of correction, to be kept to hard labour not exceeeing 3 months. *ſ* 6, 7, 8.

Perſons aggrieved on this act may appeal to the next ſeſſions, who may allow coſts. *ſ.* 9.

4. By the 1 *G. ſt.* 2. *c.* 15. Every clothier, clothworker, card maker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 40 *s.* on conviction (in 40 days) before one juſtice, on oath of one witneſs; to be diſpoſed, if in *London*, to the benefit of *Chriſt's hoſpital*, elſewhere to the poor where the offence ſhall be diſcovered; and if he ſhall not pay in 30 days, to be levied by the conſtable, by warrant of ſuch juſtice, by diſtreſs; and where no ſufficient diſtreſs can be found, to be committed to the common gaol or houſe of correction, to be kept to hard labour for 3 kalendar months. *ſ.* 7, 8, 12.

5. By

5. By the 12 *G. c.* 34. If any perſon ſhall, by day or night, break or enter by force into any houſe or ſhop, with intent to cut or deſtroy any ſerge or other woollen goods in the loom, or any tools employed in the making thereof, or ſhall wilfully and maliciouſly cut or deſtroy any ſuch ſerges or woollen goods in the loom, or on the rack, or ſhall burn, cut, or deſtroy any rack on which any ſuch ſerges or woollen goods are hanged in order to dry, or ſhall wilfully and maliciouſly break or deſtroy any tools uſed in the making ſuch goods; he ſhall be guilty of felony without benefit of clergy. *ſ.* 7.

6. By the 13 *G. c.* 23. Whereas diſputes have ariſen, between the clothiers and makers of woollen cloth, and the manufacturers employed by them, concerning the length of the warping bars, and uncertainty of weights, by which wool, yarn, and other materials uſed in the manufacturing of woollen goods have been delivered out to the workmen, for quieting the ſame it is enacted, that it ſhall not be lawful for any maker of mixed, medley, or white cloth, to uſe any bars called warping bars, but only ſuch which ſhall be of the meaſure and length hereafter appointed; that is to ſay, every long warping bar ſhall be in length three yards and three inches, and no more; and every round warping bar ſhall be 4 yards and 4 inches round, and no more; the ſaid 3 inches on the long bar, and the ſaid 4 inches on the round bar, being in lieu of the over meaſure uſually allowed in cloths; and alſo that the thrums at the ends of the warping bars ſhall not exceed 18 inches in length; and if any maker of ſuch cloth ſhall uſe any warping bar of other length or meaſure, or with thrums exceeding 18 inches in length, he ſhall forfeit 10 *l.* *ſ.* 1.

Every maker of ſuch cloth, or goods mixed with wool, ſhall give out all wool, yarn, or other materials, by weight at 16 ounces to the pound; and ſhall receive back the ſame by the ſame weight, on pain of 5 *l.* *ſ* 2.

Offences againſt this act ſhall be determined by two juſtices, on information on oath, within 3 kalendar months; who ſhall levy the penalties by diſtreſs, half to the informer, and half to the poor; for want of ſufficient diſtreſs, to be committed to gaol not exceeding 3 months, or until ſatisfaction be made. *ſ.* 4.

And all diſputes and demands, relating to work, wages, or damages, between any clothier or maker of woollen goods, or goods mixed with wool, and any weaver or other perſon employed in ſuch manufactures, ſhall be determined by two juſtices, who ſhall on complaint ſummon the parties, and hear and examine on oath, and adjudge ſuch ſatisfaction, and give ſuch coſts and damages to the party grieved, as they ſhall judge reaſonable, and iſſue their warrant to levy ſuch coſts and damages (if not paid in ten days) by diſtreſs, and for want of ſufficient diſtreſs, ſhall commit the party to the county gaol or houſe of correction, not exceeding 3 months, or till ſatisfaction be made. *ſ.* 5.

Perſons aggrieved by order of ſuch juſtices, may appeal to the next ſeſſions, giving 6 days notice; and the ſeſſions may award ſuch coſts and damages as they ſhall judge reaſonable, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, may commit

mit the party to the county gaol or houſe of correction, not exceeding 3 kalendar months, or till ſatisfaction be made: and no proceedings herein ſhall be removed by *certiorari* or other proceſs. *ſ.* 6.

And one juſtice, on information on oath, that any perſon is, or is ſuſpected to be, guilty of any the ill practices aforeſaid, may iſſue his warrant to the conſtable or other peace officer, or to any churchwarden or overſeer, directing him in the day time to enter into any houſe, ſhop, warehouſe, or other ſuſpected place, to ſearch for and examine all ſuch bars and weights as ſhall be made uſe of for the purpoſes before mentioned, by any ſuch clothier or maker of woollen goods; and if ſuch perſon ſhall interrupt the officer, he ſhall forfeit 5 *l.* *ſ.* 7.

And every maker of mixed, medley, or white broad cloth, ſhall pay the weaver according to the number of yards, that the chains are laid on the warping bars, and not otherwiſe, on pain of 5 *l.* *ſ.* 9.

XV. Diſputes between maſters and ſervants in the woollen, linen, fuſtian, cotton, and iron manufactures; by ſeveral ſtatutes.

1. By the 1 *An ſt.* 2. *c.* 18. If any perſon employed in the woollen, linen, fuſtian, cotton, or iron manufactures ſhall imbezil or purloin any wefts, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, or ſhall reel ſhort or falſe yarn, and ſhall be convicted by oath of one witneſs, or confeſſion, before one juſtice, he ſhall forfeit double the value of the damages: And if he ſhall neglect or refuſe to pay the ſame, the juſtice ſhall commit him to the houſe of correction until ſatisfaction ſhall be made: And if it ſhall appear to the juſtice, that he is not able to make ſatisfaction, he ſhall be there publickly whipped, and kept to hard labour not exceeding 14 days. *ſ.* 1.

And every perſon buying or receiving any wefts, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton, or iron, ſhall ſuffer in like manner. *ſ.* 2.

And all payments to the ſaid workmen, ſhall be in money, and not in cloth, victuals, or commodities; and all wool delivered out to be wrought up, ſhall be delivered with declaration of the true weight thereof; on pain that every offender in either of the ſaid caſes, ſhall forfeit double the value of what ſhall be due for ſuch work; and if any ſuch workman ſhall be guilty of any ſuch fraud or default, in the work by him done, he ſhall anſwer double damages. *ſ.* 3.

And all wages, demands, frauds, and defaults of labourers, in the ſaid manufactures, concerning work done, ſhall be determined by two juſtices, who may ſummon and examine witneſſes on oath: Perſons aggrieved may appeal to the ſeſſions to be holden next after notice of the order of the ſaid two juſtices; and if the ſeſſions give judgment againſt the appellant, they ſhall order him to pay ſuch coſts as to them ſhall ſeem meet. *ſ.* 4.

2. And by the 13 G. 2. c. 8. If any perſon employed in the working up of any woollen, linen, fuſtian, cotton, or iron manufactures, ſhall purloin, embezil, ſecret, ſell, pawn, exchange, or otherwiſe illegally diſpoſe of any of the materials, whether the ſame or any part thereof be or be not firſt wrought up, or ſhall reel ſhort or falſe yarn, and ſhall be convicted thereof as by the 1 *An. ſt.* 2. *c.* 18. he ſhall forfeit double value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, the ſaid juſtice ſhall cauſe him to be committed to the houſe of correction, to be whipped and kept to hard labour, not exceeding 14 days; and for a ſecond, or other ſubſequent offence, for ſuch imbezilling or purloining, he ſhall forfeit four times the value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, then ſuch or any other juſtice ſhall cauſe him to be committed to the houſe of correction to be kept to hard labour for any time not exceeding three months, nor leſs than one month, and alſo during the time of ſuch commitment ſhall cauſe him to be publickly whipped in the market town where he ſhall be committed, at the market place or croſs, once or oftner as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 1.

And the receivers of the ſame ſhall be ſubject to the like penalties. *ſ.* 2.

And the forfeitures by both theſe acts ſhall be half to the party injured, and half to the poor; with the like liberty of appealing on this act, as on the 1 *An.* *id. ſ.* 3.

XVI. Diſputes between maſters and their workmen, in the leathern manufactures; by the 13 G. 2. c. 8.

If any perſon employed in cutting, paring, waſhing, dreſſing, ſewing, making up, or otherwiſe manufacturing of gloves, breeches, leather, ſkins, boots, ſhoes, ſlippers, wares, or other goods or materials to be made uſe of in any the ſaid employments, or in any branch or particular thereof, ſhall fraudulently purloin, embezil, ſecret, ſell, pawn, or exchange all or any part of the gloves, breeches, leather, ſkins, parings or ſhreds of gloves, or leather, boots, ſhoes, ſlippers, or other the ſaid wares, either before or after they ſhall be made into wares, and be thereof convicted by the oath of the maſter or owner, or other credible witneſs, or confeſſion, before one juſtice where the offence ſhall be committed or the offender ſhall reſide; ſuch juſtice may award him to make ſatisfaction to the party injured, not exceeding double value of the goods ſo purloined or diſpoſed of, half to the party grieved, and half to the poor, together with full charges attending the conviction; to be levied by diſtreſs and ſale; and if he ſhall not have goods ſufficient, and ſhall not pay immediately, ſuch juſtice ſhall commit him to the houſe of correction or other publick priſon, to be kept to hard labour for 14 days, and whipped in ſuch manner as the juſtice ſhall direct; and for a ſecond, or other ſubſe-

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quent offence, he ſhall forfeit four times the value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, to be committed to the houſe of correction or other publick priſon, to be there kept to hard labour not exceeding three months, nor leſs than one month, and alſo during ſuch commitment to be publickly whipped in the market town where he ſhall be committed, at the market place or croſs, once or oftner as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 4.

And every perſon who ſhall knowingly or willingly receive any the ſaid goods or materials, either from the perſon offending, or from any other perſon (except the owner) or offer ſo to do; he ſhall, on like conviction, make ſuch recompence in two days, or elſe be ſubject to ſuch diſtreſs, and for want of ſufficient diſtreſs be liable to the like puniſhment, as the perſons ſo purloining or otherwiſe diſpoſing thereof as above; and ſo in like manner for the ſecond and every ſubſequent offence. *ſ.* 5.

And all payments to workmen employed in the ſaid manufactures, ſhall be in money, and not in goods, except by their own requeſt and conſent; and all materials delivered out to be wrought in ſuch manufactures, ſhall be delivered with a declaration of the true weight, quantity, or tale thereof; on pain of forfeiting to ſuch manufacturer double value of what ſhall be due for his work; and if ſuch labourer or manufacturer ſhall be guilty of any fraud, abuſe, neglect, or default in the work by him undertaken to be done, he ſhall anſwer to the owner double damages. *ſ.* 6.

And all wages, demands, frauds, abuſes, neglects, and defaults of labourers and manufacturers in the ſaid trades, concerning any work done in ſuch manufacture, ſhall be determined by two juſtices, who may ſummon and examine witneſſes upon oath. *ſ.* 7.

Moreover, every perſon retained or employed in making up any the ſaid manufactures, for any one maſter, and neglecting the performance thereof, either by procuring or permitting himſelf to be ſubſequently employed by any other maſter, before he hath compleated the work, ſhall on conviction by oath of one witneſs before one juſtice, be ſent to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 8.

Perſons aggrieved by any order of the ſaid two juſtices, may appeal to the next ſeſſions, giving 8 days notice; and the ſeſſions may award coſts to either party. But no order of ſuch two juſtices ſhall be appealed againſt, or quaſhed, for want of form only. *ſ.* 9.

XVII. Diſputes between maſters and their workmen, in the making of hats, or in the woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilken manufactures; by the 22 G. 2. c. 27.

If any perſon hired or employed to make up any felt or hat, or to prepare or work up any woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilk manufactures, or any

manufactures made up of wool, furr, hemp, flax, cotton, mohair, or silk, or of any the said materials mixed one with another, shall purloin, embezil, or otherwise unlawfully dispose of any of the materials with which he shall be intrusted, whether the same be or be not first wrought up, or shall reel short or false yarn, and be convicted thereof by the oath of the owner, or other credible witness, or confession, before one justice where the offence shall be committed, or the party shall reside, he shall be committed to the house of correction, or other publick prison, to be kept to hard labour for 14 days, and to be once publickly whipped, at the market place, or other publick place where he shall be committed; and for a second or other subsequent offence, he shall be committed in like manner, for any time not exceeding three months, nor less than one month, to be kept to hard labour, and also to be publickly whipped twice or oftner. *s.* 1.

And if any person shall be convicted as aforesaid, of buying, receiving, or taking by way of gift, pledge, sale, or exchange, or in any other manner, from any person whom he knows to be employed to make or prepare any the said manufactures, any thrums or ends of yarns, or any other materials of wool, furr, hemp, flax, cotton, iron, or any leather, mohair, or silk, whether the same be or be not first wrought up, the consent of the employer not being first had; or of buying or receiving in any manner whatsoever, from any other person, any of the said materials, whether the same be or be not first wrought up, knowing them to be purloined or embezilled, he shall, for the first offence, forfeit 20*l.* and if not paid immediately, the justice shall commit him to the house of correction or other publick prison, to be kept to hard labour for 14 days, unless the forfeiture be sooner paid; and if it be not paid in two days before the expiration of the term, he shall be publickly whipped at the market place, or other publick place of the town, once or oftner, as the justices shall order; and for a second, or other subsequent offence, he shall forfeit 40*l.* and if not paid immediately, he shall be committed in like manner, to be kept to hard labour not exceeding three months, nor less than one month, unless the forfeiture be sooner paid; and if it be not paid in seven days before expiration of the term, he shall be publickly whipped twice or oftner, as the justice shall order: And the said forfeitures, after satisfaction made thereout to the party injured, with such costs as shall be adjudged by the justice, shall be equally distributed among the poor of the parish where the offender shall reside. *s.* 2.

(Which conviction shall be in the form and words following;

Middlesex to wit. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of his majesty's reign,* A. B. *was convicted before me* [or *us*] ——— *of his majesty's justices of the peace for the said county of* ——— [or, *for the riding or division of the said county of* ——— or, *for the city, liberty, or town of* ——— *in the said county of* ——— as the case shall be] *of buying, receiving, or taking to pawn* (as the case shall be) ——— specifying the materials

rials or wares so bought, received, or taken to pawn) *the property of* C. D. *of* ——— *in the county of* ——— *and by him* (or *her*) *delivered to* ——— *to be manufactured. Given under my hand and seal* [or, *our hands and seals*] *the day and year aforesaid.*

Which shall not be removed by *certiorari:* And the justices shall cause the same to be written on parchment and transmitted to the next sessions, to be filed amongst the records. 23 *G.* 2. *c.* 13. *s.* 9.)

Persons convicted of buying or receiving any the said materials, may appeal to the next sessions; in which case the execution of the judgment shall be suspended, the person entring into a recognizance before the justice, at the time of the conviction, with two sureties, in double the sum adjudged, to prosecute the appeal, and to be forthcoming to abide the determination of the justices in the said sessions; and the sessions may award costs to either party; and if the judgment be affirmed, the appellant shall immediately pay the sum adjudged, with costs; or in default thereof, shall suffer the penalties before directed. *s.* 3.

And if any person shall be convicted of purloining or embezilling any the said materials, or of buying or receiving the same in manner before described, the justice before whom the conviction shall be, may issue his warrant to any person, impowering him in the presence of a constable, to enter into and search in the day time, the houses and other places belonging to such person, and to bring such materials as shall be found, before the said justice, to be kept in custody by him; and if in 24 days it shall be made appear to the justice, that the person from whose house the said materials shall be so taken, is the lawful owner, they shall be restored to him; otherwise they shall be deemed to be purloined or embezilled, and shall be publickly sold, and the money arising thereby (charges of sale being first deducted) shall be equally distributed amongst the poor of the parish where the person convicted shall reside. *s.* 4.

And the said justice shall, within three days after such materials shall be brought to him, give notice thereof in writing under his hand and seal, to the person convicted, appointing a time and place for his attending to prove his property therein; which shall be within 21 days, and not less than 18 days after such notice; and if such person be in any house of correction or other prison, the justice shall cause a copy of the said notice, attested under his hand and seal, to be delivered to the keeper; who shall bring the said person at the time and place specified, on pain of forfeiting to the prisoner the full value of the said materials, by distress and sale, by warrant of the said justice, if not paid immediately. *s.* 5.

If any person shall be aggrieved by the judgment of the justice, relating to the sale of the materials, he may appeal to the next sessions, and in the mean time the sale shall be postponed; a written notice under the hand of the appellant, signifying his intention to appeal, being given to the justice, before the time appointed for the sale; and if the appellant shall not prosecute the ap-

peal, or the judgment ſhall be affirmed, the ſeſſions may award coſts to the defendant. *ſ.* 6.

And if any perſon ſhall not make uſe of the whole of the materials, and ſhall not return the remainder in 21 days (if required by the owner) this ſhall be deemed embezilling and purloining. *ſ.* 7.

And upon complaint on oath of any offence againſt this act to any one juſtice, he ſhall iſſue his warrant for bringing the offender before him, or any other juſtice, who ſhall hear and determine the ſame. *ſ.* 8.

And if any perſon ſhall be employed to work up any of the ſaid manufactures for any one maſter, and ſhall neglect or refuſe the performance thereof, by permitting himſelf to be ſubſequently retained by any other perſon, before he ſhall have compleated the ſame; he ſhall, on conviction on the oath of one witneſs, before one juſtice, be ſent to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 9.

But this ſtatute ſhall not repeal the 13 & 14 *C.* 2. nor the 20 *C.* 2. nor the 8 & 9 *W.* before mentioned. *ſ.* 10.

Moreover, all contracts or agreemeuts, and all by-laws, rules, and orders, made in any unlawful clubs and ſocieties, by any perſons employed in any woollen manufacture, or in the making of felts or hats, or in any manufacture of ſilk, mohair, furr, hemp, flax, linen, cotton, fuſtian, iron, or leather, or in any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or ſilk, or any of the ſaid materials mixed one with another, for regulating any of the ſaid trades, or for ſettling the prices of goods, or for advancing their wages, or for leſſening their uſual hours of work, ſhall be void: And if any ſuch perſon ſhall be concerned in any ſuch combination, he ſhall on conviction in three kalendar months, on the oath of one witneſs before two juſtices, be committed to the houſe of correction, to be kept to hard labour, not exceeding three months, or to the common gaol not exceeding three months. *ſ.* 12.

And if any ſuch perſon ſhall depart from his ſervice before the end of the term, or ſhall quit or return his work before it be finiſhed, unleſs for ſome reaſonable cauſe to be allowed by two juſtices; he ſhall on the like conviction before two juſtices, be committed to the houſe of correction, to be kept to hard labour not exceeding three months. *id.*

And if any ſuch perſon ſhall wilfully damnify, ſpoil, or deſtroy, without conſent of the owner, any work committed to his charge, he ſhall, on conviction as aforeſaid, forfeit to the owner double value, by diſtreſs, by warrant of two juſtices; and for want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard labour, for any time not exceeding three months, or till ſatisfaction be made. *id.*

And every ſuch maſter ſhall pay his workmen in money, and not otherwiſe, and ſhall not make any deduction on account of any goods ſold or delivered previous to the agreement: And for the more eaſy recovering the ſaid wages, two juſtices upon complaint (in three months, 15 *G.* *c.* 23) ſhall ſummon the party offending,

ſending, and for non-payment ſhall iſſue their warrant to levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, ſhall commit the offender to gaol for ſix months, or until he ſhall pay, or give full ſatisfaction for the ſame, to the good liking of the party grieved. *id.*

And every perſon paying the ſame otherwiſe than in money, ſhall forfeit 10*l.* half to the informer, and half to the party grieved, by diſtreſs as aforeſaid. *id.*

Perſons aggrieved by order of the two juſtices may appeal to the next ſeſſions, giving reaſonable notice; the reaſonableneſs of which notice ſhall be determined by the juſtices at the ſaid ſeſſions; and if reaſonable time of notice was not given, they ſhall adjourn the appeal to the next ſeſſions after; and the ſeſſions may award coſts to either party. *id.*

Moreover, if any perſon ſhall aſſault or abuſe any maſter or other perſon concerned in any of the ſaid manufactures, whereby he ſhall receive any bodily hurt, for not complying with any ſuch illegal by-laws, rules, or orders; or ſhall write or cauſe to be written, or knowingly ſend or cauſe to be ſent any letter, writing, or meſſage, threatning any harm to any ſuch perſon, or threatning to burn, pull down, or deſtroy any of his houſes, or cut down any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any ſuch illegal by-laws, rules, or orders; he ſhall on conviction by indictment, in 12 kalendar months, be guilty of felony, and tranſported for ſeven years. *id.*

XVIII. Diſputes between maſters and their workemen in the manufacture of clocks and watches; by the 27 G. 2. c. 7.

If any perſon employed by any one practiſing the trade of clockmaking, or watchmaking, or any part or branch thereof, to make, finiſh, alter, repair, or clean any clock, watch, or part thereof; or intruſted by any perſon practiſing the ſaid trade or trades, with any gold, ſilver, or other metal or material, to be, or that ſhall be, in the whole or in part, wrought or manufactured for any part of a clock or watch, or any diamond or other precious ſtone, to be, or that ſhall be, ſet or fixed in or about any clock or watch; ſhall purloin, imbezil, ſecrete, ſell, pawn, exchange, or otherwiſe unlawfully diſpoſe of any clock, watch, gold, ſilver, or other metal or material, or any part thereof, or any diamond or other precious ſtone, with which he ſhall be ſo intruſted; and ſhall be thereof convicted by the oath of the owner, or other credible witneſs, or confeſſion, before one juſtice where the offence ſhall be committed, or the perſon ſo charged ſhall reſide: he ſhall for the firſt offence forfeit 20*l.* and if not forthwith paid, the juſtice ſhall commit him to the houſe of correction or other publick priſon, there to be kept to hard labour for the ſpace of 14 days, unleſs the forfeiture ſhall be ſooner paid; and if within two days before the expiration of the ſaid 14 days

ſuch forfeiture ſhall not be paid, the juſtice may order him to be publickly whipped at the market place, or ſome other publick place, of the city, town, or place, where he ſhall be committed; and for a ſecond, or other ſubſequent offence, he ſhall forfeit 40 *l.* in like manner, and if not paid forthwith, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice may order him to be whipped in like manner twice or oftner, as to ſuch juſtice ſhall appear reaſonable.

And if any perſon ſhall buy, receive, accept, or take by way of gift, pawn, pledge, ſale, or exchange, or in any other manner, of or from any perſon whomſoever, any clock or watch, or part thereof, or any gold, ſilver, or other metal or material as aforeſaid, whether the ſame, or any part thereof, be or be not wrought or manufactured, or any ſuch diamond or other precious ſtone, knowing the ſame to be ſo purloined or imbezilled; he ſhall, on the like conviction, for the firſt offence forfeit 20 *l.* and if not forthwith paid, the juſtice ſhall commit him in like manner, to be kept to hard labour for 14 days, unleſs the forfeiture ſhall be ſooner paid, and if within two days before the expiration of the ſaid 14 days, the ſaid forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, once or oftner, as to ſuch juſtice ſhall appear reaſonable; and for a ſecond or other ſubſequent offence, he ſhall forfeit 40 *l.* and if not forthwith paid, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour, for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, twice or oftner, as to him ſhall appear reaſonable.

And one juſtice, on complaint to him made upon oath, of any offence againſt this act, may iſſue his warrant for apprehending and bringing before him, or before any other juſtice of the ſame place, the perſon ſo charged.

And the conviction ſhall be in this form,

Middleſex to wit. BE *it remembred that on the* ——— *day of* ——— *in the* ——— *year of his majeſty's reign,* A. B. *was convicted before me* (or *us*) ——— *of his majeſty's juſtices of the peace for the ſaid county of* ——— *or for the* ——— *riding* (or *diviſion*) *of the ſaid county of* ——— *or for the city, liberty, or town of* ——— *in the ſaid county of* ——— (as the caſe ſhall be) *of purloining, embezilling, ſecreting, ſelling, pawning, exchanging, or unlawfully diſpoſing of, or of buying, receiving, or taking to pawn* (as the caſe ſhall happen to be) ——— ſpecifying the reſpective goods, materials or effects) *the property of* C. D. *of* ——— *in the county of* ——— *Given under my hand and ſeal* (or *our hands and ſeals*) *the day and year aforeſaid.*

If

If any perſon ſhall think himſelf aggrieved by the judgment of the juſtice, he may appeal to the next ſeſſions; in which caſe the execution of the judgment ſhall be ſuſpended, the perſon ſo convicted entring into a recognizance at the time of the conviction, with two ſureties, in double the ſum adjudged, to proſecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the juſtices in ſuch ſeſſions; and the juſtices there ſhall hear and determine the ſame, and award ſuch coſts to either party, as to them ſhall appear juſt and reaſonable: and if the judgment ſhall be affirmed, the appellant ſhall immediately pay the ſum adjudged, together with ſuch coſts as ſhall by the court be awarded; or in default thereof, ſhall ſuffer the penalties as for purloining, embezilling, or receiving as aforeſaid.

The ſaid forfeitures, after ſatisfaction made thereout to the party injured, together with ſuch coſts of proſecution as the juſtice ſhall judge reaſonable, ſhall go to the uſe of the poor where the offender ſhall reſide.

And the juſtice ſhall cauſe the conviction to be fairly written upon parchment, and tranſmitted to the next ſeſſions, there to be filed and kept amongſt the records

And the ſame ſhall not be removed by *certiorari*.

XIX. Diſputes between maſters and ſervants in huſbandry, artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers; by the 20 G. 2. c. 19.

By conſtruction of law upon the ſtatute of the 5 *El.* the juſtices had a power of compelling the payment of the wages which they had rated and aſſeſſed; but the ſaid ſtatute being deficient in two material points, to wit, in extending only to ſuch wages as ſhould be rated, and to ſervants in huſbandry only; and moreover, there being therein (as hath been obſerved) no power to admit the ſervant's oath as evidence; therefore by the 20 *G.* 2. *c.* 19. it is enacted as follows:

All complaints, differences, and diſputes between maſters or miſtreſſes and ſervants in huſbandry hired for a year or longer, or between maſters and miſtreſſes and artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers employed for any certain time or in any other manner, ſhall be determined (A) by one juſtice, where the maſter or miſtreſs ſhall inhabit, altho' no rate or aſſeſſment of wages has been made that year; which juſtice ſhall examine on oath any ſuch ſervant or other the ſaid perſons, or any other witneſſes touching ſuch complaint, and make ſuch order (B) for payment of wages, as to him ſhall ſeem juſt and reaſonable, provided that the ſum in queſtion do not exceed 10*l.* with regard to any ſervant, nor 5*l.* with regard to any other perſons before mentioned; and in caſe of non payment for 21 days, ſuch juſtice may iſſue his warrant to levy the ſame by diſtreſs (C). *§.* 1.

And

And by the ſaid ſtatute, ſuch juſtice on application or complaint on oath by any maſter, miſtreſs, or employer, againſt any ſuch ſervant, artificer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, or labourer, concerning any miſdemeanor, miſcarriage, or ill behaviour in ſuch his ſervice or employment, may hear and determine the ſame (D), and puniſh the offender by commitment (E) to the houſe of correction, there to remain and be corrected, and held to hard labour not exceeding one kalendar month, or otherwiſe by abating ſome part of his wages (F), or by diſcharging (G) ſuch ſervant or other the ſaid perſons from their ſervice or employment. *ſ.* 1.

And in like manner, ſuch juſtice on complaint or application on oath by any ſuch ſervant, artificer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, or other labourer, againſt ſuch maſter, miſtreſs, or employer, concerning any miſuſage, refuſal of neceſſary proviſion, cruelty, or other ill treatment, may ſummon (H) ſuch maſter, miſtreſs, or employer, to appear before him at a reaſonable time to be prefixed in ſuch ſummons; and he ſhall examine into the matter of ſuch complaint, whether ſuch maſter, miſtreſs, or employer ſhall appear or not, proof being made upon oath of their being duly ſummoned; and upon proof thereof made upon oath, to his ſatisfaction, may diſcharge (I) ſuch ſervant, or other perſon aforeſaid, from his ſervice and employment, which diſcharge ſhall be given under his hand and ſeal *gratis*. *ſ.* 2.

If any perſon ſhall think himſelf aggrieved by ſuch determination, order, or warrant of ſuch juſtice (except any order of commitment) he may appeal to the next ſeſſions, who may award coſts to either party, not exceeding 40*s.* to be levied by diſtreſs in manner before mentioned. *ſ.* 5.

And no *certiorari* ſhall iſſue to remove any proceedings hereupon. *ſ.* 6.

Note; The words in the aforegoing ſtatute [*and other labourers, employed for any certain time, or in any other manner*] are very general and comprehenſive, but yet perhaps ought not to be underſtood without ſome limitation: eſpecially it ſeemeth not neceſſary to extend them to any of the workmen in the woollen, linen, cotton, iron, leather, furr, hempen, or other manufactures herein before ſpecified, becauſe the law hath provided other methods of proceeding therein, and particularly becauſe the ſtatute of the 22 *G.* 2. which is ſubſequent to this ſtatute, takes no notice of this ſtatute, but makes divers regulations in the aforeſaid inſtances, which if this ſtatute had been ſuppoſed to extend unto them, would have been ſuperfluous and impertinent. And with leſs reaſon may the word *labourers* ſeem to extend to footmen, coachmen, carriers, and ſuch like; but from the company with which it is ranked, to wit, miners, colliers, keelmen, and the like, it ſeems moſt properly to ſignify ſuch perſons, not being brought up to or employed in trades, as procure their ſuſtenance by bodily labour.

XX. Shipmaſters and their ſeamen.

By the 2 *G.* 2. *c.* 36. which by the 23 *G.* 2. *c.* 26. is continued to *March* 25, 1764, *&c.* it is enacted as follows:

It ſhall not be lawful for any maſter of a ſhip bound to parts beyond ſea, to carry any ſeaman or mariner, except his apprentices, to ſea, without firſt agreeing with them for their wages, which agreement ſhall be made in writing, declaring what wages each ſeaman is to have reſpectively, during the whole voyage, or for the time he ſhall ſhip himſelf for; and alſo to expreſs the voyage, for which the mariner was ſhipt, to perform the ſame, and to be ſigned by both parties; on pain that the maſter ſhall forfeit 5 *l.* for every ſuch ſeaman to *Greenwich* hoſpital, to be recovered on oath of one witneſs, before one juſtice, who ſhall iſſue his warrant to bring ſuch maſter before him; to be levied by diſtreſs; and if no diſtreſs can be found, to be committed to gaol till he ſhall pay the ſame.

Such mariner ſhall alſo ſign the agreement, in 3 days after he is entred on board.

And if any mariner ſhall deſert, or refuſe to proceed on the voyage, or ſhall deſert beyond the ſeas, after he ſhall have ſigned ſuch agreement, he ſhall forfeit to the owner of the ſhip the wages due to him.

And if any mariner ſhall deſert or abſent himſelf, after he hath ſigned ſuch contract; on application of the maſter, or owner of the ſhip, to one juſtice, he ſhall iſſue his warrant to apprehend ſuch mariner: and if he ſhall refuſe to proceed on the voyage, and ſhall not give a ſufficient reaſon for ſuch refuſal, then to be committed to the houſe of correction, to be kept to hard labour, not exceeding 30 days, nor leſs than 14 days.

And if any mariner ſhall abſent himſelf from the ſhip, without leave of the maſter, or other officer having charge of ſuch ſhip, he ſhall for every day's abſence forfeit two days pay to *Greenwich* hoſpital.

And if any mariner, not entring into the king's ſervice, ſhall leave the ſhip before he ſhall have a diſcharge in writing by the maſter, he ſhall forfeit one month's pay, to be recovered and diſpoſed of as hereafter is mentioned.

And the maſters ſhall pay the mariners their wages, if demanded, in 30 days after the ſhip's being entred at the cuſtom houſe (unleſs there is a covenant to the contrary), or at the time they ſhall be diſcharged, which ſhall firſt happen, deducting the penalties of this act: on pain of paying to each mariner that ſhall be unpaid, 20 *s.* above his wages, to be recovered as the wages.

But no mariner by entring into, or ſigning ſuch agreement, ſhall be deprived of any means for recovery of wages, which he may now uſe: And the maſter ſhall be obliged to produce the contract, and not the mariner.

And the maſter ſhall deduct out of the wages all the penalties of this act, and enter the ſame in a book, and make oath, if required, to the truth thereof; which book ſhall be ſigned by the maſter,

maſter, and two principal officers of the ſhip: which forfeitures (except forfeiture of wages to the owner on deſertion, or refuſing to proceed on the voyage) ſhall be applied to *Greenwich* hoſpital, to be paid to the officer in any port who collects the 6 *d.* a month deducted out of ſeamens wages, for the uſe of the hoſpital; which officer ſhall have power to adminiſter an oath to ſuch maſter, touching the truth of ſuch penalties.

The maſter deducting the ſaid penalties, and not paying them over in 3 months, ſhall forfeit treble to the ſaid hoſpital; to be recovered as any penalties, for not duly paying the 6 *d.* a month.

Nevertheleſs, this act ſhall not debar any ſeaman from entring into the king's ſervice, nor ſhall he forfeit his wages in that caſe, nor ſhall ſuch entry be deemed a deſertion.

XXI. Taylors and their workmen within the bills.

By the 7 *G. ſt.* 1. *c.* 13. All contracts by or between journeymen taylors within the bills, for advancing their wages, or leſſening their hours of work, ſhall be void; and perſons entring into ſuch agreement, ſhall on conviction in 3 months, on oath of one witneſs, before two juſtices, be committed to the gaol or houſe of correction for any time not exceeding two months.

And the ſeſſions from time to time, upon application to them made, ſhall appoint the wages and hours of work; which all taylors and their workmen ſhall obſerve, on pain of impriſonment by ſuch juſtices for any time not exceeding two months, on proſecution in 6 days.

And if any journeyman taylor ſhall depart from his ſervice before the end of his term, or before his work be finiſhed, or ſhall refuſe to enter into work, unleſs for cauſe to be allowed by two juſtices, he ſhall be ſent to the houſe of correction not exceeding two months.

Taylors allowing greater wages than ſo limited, ſhall forfeit 5 *l.* on conviction in 3 months, half to the informer, and half to the poor; and journeymen taking greater wages, ſhall be ſent to the houſe of correction not exceeding two months.

Perſons aggrieved by any order of two juſtices, may appeal to the next ſeſſions, giving 6 days notice; and the ſeſſions may award coſts to either party.

XXII. Shoemakers and their workmen within the bills.

By the 9 *G. c.* 27. If any journeyman ſhoemaker within the bills of mortality, ſhall be accuſed by his maſter of purloining any ſhoes or other wares or materials, one juſtice where the offence ſhall be committed, or the offender ſhall inhabit, on oath of ſuch offence, may ſummon the party, or iſſue his warrant to apprehend him; and if the ſame is proved before him by confeſſion, or oath of one witneſs, he ſhall award ſatisfaction for damages and charges, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, ſhall cauſe the offender to be whipped where the offence was committed; and for a ſecond or other offence, he ſhall commit

mit him to the houſe of correction, not exceeding one month, nor leſs than 14 days.

And every perſon who ſhall buy, receive, or take in pawn the ſame, ſhall be ſubject to the ſame puniſhment.

And two juſtices, on complaint on oath, may iſſue their warrant for ſearching in the day time for goods ſo purloined, and break open doors, and every perſon hindring ſuch ſearch ſhall forfeit 10 *l.* to him who ſhall ſue in two months; and if ſuch goods ſhall be found, they ſhall reſtore them to the owner, and cauſe the offender to make ſatisfaction for the damages and charges, as aforeſaid.

And every perſon retained by one maſter, who ſhall ſuffer himſelf to be retained by any other, before he hath finiſhed his work, ſhall, on conviction on oath of one witneſs, before one juſtice, be ſent to the houſe of correction not exceeding one month.

Perſons aggrieved may appeal to the next ſeſſions, giving 8 days notice.

XXIII. How far the maſter is anſwerable for the ſervant.

1. The maſter is indictable for a nuſance done by his ſervant; as for throwing dirt in the highways. L. *Raym.* 264.

But nevertheleſs it ſeemeth, that the ſervant alſo is indictable; for Mr. *Hawkins* ſays, that a ſervant is not excuſed the commiſſion of any crime, by the command or coertion of his maſter. 1 *Hawv.* 3.

2. If goods are delivered to the ſervant of a carrier, and the goods are loſt, an action lies againſt the maſter. *Wood* 95.

3. A ſervant with a cart, ran againſt another cart, wherein was a pipe of ſack, and overturned the cart, and ſpoiled the ſack; an action lies againſt the maſter. 2 *Salk.* 441.

4. *M.* 10 *W.* *Jones* and *Hart.* A pawn broker's ſervant took a pawn; the pawner came and tendred the money to the ſervant; he ſaid he had loſt the goods; upon this the pawner brought an action againſt the maſter; and it was held well. 2 *Salk.* 441.

5. *H.* 8 *G.* *Mead* and *Hammond.* The plaintiff, according to the common courſe of dealing, delivered to the defendant's ſervant an ingot of gold to eſſay; and it not being returned, he brought an action againſt the maſter. And *Pratt* Ch. J. directed the jury, that the delivery to the ſervant was ſufficient to maintain the action againſt the maſter, on proving a ſubſequent demand and refuſal; ſo the plaintiff had a verdict. *Str.* 505.

6. *M.* 8 *G.* *Cary* and *Webſter.* The defendant was a clerk of the *South-ſea* company, and took in payments. The plaintiff paid him 600 *l.* and he paid it over to the company. And by *Pratt* Ch. J. No action in this caſe lies againſt the ſervant. If he had not paid it over, the plaintiff would have had his option, either to charge him or the company; as in the common caſe of payment to a goldſmith's ſervant, who doth not carry it to the account of his maſter, the party hath an election to go againſt

either: he may charge the servant, because till the money is paid over, the servant receives it to his use; or he may pass by the servant, and make his demand upon the master, because the payment to the servant is made in confidence of the credit given him by the master. *Str.* 480.

A. Summons of the master for wages, on complaint of the servant, on the 20 *G.* 2. *c.* 19.

Westmorland. { To the constable of ——— in the said county.

WHEREAS *information and complaint hath been made unto me* ——— *one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *of* ——— *in the said county, husbandman, that he the said* A. S. *was duly hired by* A. M. *of* ——— *in the said county, husbandman, to be a servant in husbandry to and with him the said* A. M. *for one whole year, to wit, from* Whitsuntide *in the year of our lord* ——— *to* Whitsuntide *now last past,* [or, *labourer*; or, *artificer*; or as the case shall be] *for the wages of* ———; *And accordingly that he the said* A. S. *hath duly performed the said service; yet nevertheless that he the said* A. M. *hath refused, and doth refuse, to pay unto him the said* A. S. *the wages justly due to him for his said service: These are therefore to command you forthwith to summon the said* A. M. *to appear before me at* ——— *in the said county, on* ——— *the* ——— *day of this present month of* ——— *at the hour of* ——— *in the afternoon of the same day, to shew cause why the said wages should not be paid. And be you then there to certify what you shall have done in the premisses. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

B. Order for payment of the same.

Westmorland. WHEREAS *information and complaint hath been made unto me* ——— *one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *of* ——— *in the said county, husbandman, that he the said* A. S. *was duly hired by* A. M. *of* ——— *in the said county, husbandman, to be a servant in husbandry to and with him the said* A. M. *for one whole year, to wit, from* Whitsuntide *in the year of our lord* ——— *to* Whitsuntide *now last past* [or, *artificer, glassman, pitman, labourer,* or otherwise as the case shall be] *and that he the said* A. S. *hath duly performed the said service; yet nevertheless, that he the said* A. M. *did refuse to pay to him the said* A. S. *the wages justly due unto him for such service as aforesaid; And whereas the said* A. M. *having appeared before me, in pursuance of my summons for that purpose, hath not proved to me, that the said wages have been duly paid to him the said* A. S. *as*

aforesaid,

aforesaid, nor hath shewed to me any just cause why the said wages should not be paid, and hath not paid the same: [Or, *And whereas it duly appears to me as well upon the oath of* A. C. *constable of* ——— *aforesaid, as otherwise, that he the said* A. C. *by virtue of my precept to him directed, did duly summon the said* A. M. *to appear before me at a certain time and place therein prefixed, to shew cause why the said wages should not be paid; and whereas the said* A. M. *hath neglected to appear according to the said summons, and hath not shewed any cause as aforesaid*] *I therefore, having duly examined into the truth and matter of the said complaint, and upon due consideration had thereof, do hereby adjudge, determine, and order, that he the said* A. M. *upon due notice hereof, do pay or cause to be paid to him the said* A. S. *the sum of* ——— *which appears to me to be just and reasonable to be paid by him the said* A. M. *to him the said* A. S. *as and for his wages as aforesaid. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

C. Warrant of distress for the same.

Westmorland. { To the constable of ———.

WHEREAS A. S. *of* ——— *in the said county, husbandman, hath duly complained unto me* ——— *one of his majesty's justices of the peace in and for the said county, that* A. M. *of* ——— *in the said county, husbandman, hath refused to pay unto him the said* A. S. *the wages justly due unto him for service in husbandry for one whole year truly and faithfully performed by him the said* A. S. *to him the said* A. M. [Or, as the case shall be] *And whereas the said* A. M. *having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages have been paid to him the said* A. S. *as aforesaid, and hath not shewed any just cause why the same should not be paid* [Or, *And whereas the said* A. M. *hath been duly summoned by me to shew cause to me why the said wages should not be paid, but he the said* A. M. *hath neglected to appear according to the said summons, and hath not shewed any cause as aforesaid*] *I therefore the said justice, upon due consideration had thereof, on the* ——— *day of* ——— *now last past, by writing under my hand and seal did thereupon determine and order, that he the said* A. M. *should pay to him the said* A. S. *the sum of* ——— *which appeared to me to be just and reasonable to be paid by him the said* A. M. *to him the said* A. S. *as and for his wages as aforesaid; And whereas it duly appears to me, that he the said* A. M. *on the said* ——— *day of* ——— *now last past, had due notice of my said order, and that due demand of the said sum of* ——— *was then made of him the said* A. M. *by him the said* A. S. *but that he the said* A. M. *did not then pay, nor hath yet paid the same, nor any part thereof; These are therefore to command you to make distress of the goods and chattels of him the said* A. M. *and if within the space of* [*four*] *days next after such distress by you made, the said sum of* ——— *together with the*

reasonable

reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof, that you pay the said sum of ——— unto him the said A. S. *returning the overplus upon demand unto him the said* A. M. *the reasonable charges of taking, keeping, and selling the said distress, being thereout first deducted. Given under my hand and seal the ——— day of ——— in the ——— year ———.*

D. Warrant for a servant on complaint of the master, for misbehaviour, on the 20 *G.* 2. *c.* 19.

Westmorland. { To the constable of ———.

WHEREAS *information and complaint hath been made unto me ——— one of his majesty's justices of the peace in and for the said county, upon the oath of* A. M. *of ——— in the said county, husbandman,* [*artificer, labourer,* or as the case shall be] *that* A. S. *of ——— aforesaid in the said county, husbandman, was hired by him the said* A. M. *to be servant in husbandry to him the said* A. M. *for one whole year, from* Whitsuntide *now last past, until* Whitsuntide *now next ensuing; and that he the said* A. S. *hath in his said service* [or, *employment*] *been guilty of divers misdemeanors, miscarriages, and ill behaviour, towards him the said* A. M. *and particularly* [as the case shall be]; *These are therefore to command you forthwith to bring the said* A. S. *before me to answer unto the said complaint, and to be further dealt withal according to law. Given under my hand and seal, the ——— day of ——— in the ——— year of the reign of ———.*

E. Commitment of the servant thereupon to the house of correction.

Westmorland. { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS *information and complaint hath been made* ——— (the same as above, reciting the complaint) *And whereas in pursuance of the statute in that case made and provided, I have duly examined the proofs and allegations of both the said parties, touching the matter of the said complaint, and upon due consideration had thereof, have adjudged and determined, and do hereby adjudge and determine the said complaint to be true: These are therefore to command you the said constable forthwith to convey the said* A. S. *to the said house of correction at ——— aforesaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the said keeper to receive the said* A. S. *into your custody in the said house of correction, there to remain,*

remain, and be corrected, and held to hard labour for the space of one kalendar month [or for a lesser time] *from the date hereof. And for your so doing, this shall be your sufficient warrant. Given under my hand and seal, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

F. Or otherwise he may be punished by abatement of wages, as follows:

THE same as above to ——— *and do hereby adjudge and determine the said complaint to be true: I do therefore hereby order, as a punishment for the said offence, that the said* A. S. *shall abate from his wages to be paid to him by the said* A. M. *the sum of* ——— *and do hereby discharge the said* A. M. *from the payment of the said sum of* ——— *as part of the wages of him the said* A. S. *Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year* ———.

G. Or otherwise he may be discharged, thus:

——— *and do hereby adjudge and determine the said complaint to be true: I do therefore hereby order, as a punishment for the said offence, that the said* A. S. *be discharged, and do hereby discharge him the said* A. S. *from his said service* [or, *employment*] *and the said* M. A. *from keeping him the said* A. S. *Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year* ———.

H. Summons of the master, on complaint of the servant, for ill usage; on the 20 *G.* 2. *c.* 19.

Westmorland. { To the constable of ———.

WHEREAS *complaint hath been made unto me* ——— *one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *of* ——— *in the said county, husbandman,* [*labourer,* &c.] *that he the said* A. S. *was duly hired by* A. M. *of* ——— *aforesaid in the said county, husbandman, to be servant in husbandry to him the said* A. M. [or, as the case shall be] *for one whole year to commence from* Whitsuntide *now last past; and that he the said* A. S. *did accordingly at the time aforesaid enter upon, and afterwards until this present time hath continued, and doth continue, in the said service* [or *employment*]; *But that he the said* A. M. *during the said service hath misused him the said* A. S. [*refused necessary provision, been guilty of cruelty or other ill treatment,* mentioning the particulars] *These are therefore to require you in his majesty's name, to summon the said* A. M. *by shewing unto him this precept, or leaving a true copy thereof at his usual place of abode, to appear before me on* ——— *at the house of* ——— *in* ——— *in the said county, at the hour of* ——— *in the afternoon of the same day, to answer unto the said complaint,*

And be you then there with this precept, to certify what you shall have done in the execution thereof. Given under my hand and seal the ——— day of ——— in the ——— year ———.

I. Discharge of the servant thereupon.

THE same as before, to the end of the complaint ——— *And whereas the said* A. M. *in pursuance of my summons for that purpose hath appeared before me, to answer unto the said complaint, but hath not proved that he is not guilty of the said complaint and charge; but on the contrary it hath been fully and duly proved before me, that he the said* A. M. *is guilty of the several offences so complained of as aforesaid;* [Or, *And whereas it appears to me upon the oath of* A. C. *constable of ——— aforesaid, that he the said* A. C. *by virtue of my precept to him directed, did duly summon him the said* A. M. *to appear before me at a reasonable time therein prefixed, to answer unto the said complaint, but he the said* A. M. *hath neglected to appear according to the said summons*] *I therefore, having examined into the truth and matter of the said complaint, and upon due consideration had thereof, do hereby adjudge the said complaint to be true; and thereupon do order that the said* A. S. *be discharged, and do hereby discharge the said* A. S. *from his said service* [or, *employment.*] *Given under my hand and seal the ——— day of ——— in the ——— year of the reign of ———.*

Sessions.

Sessions, what.

1. THE sessions of the peace is a court of record, holden before two or more justices, whereof one is of the *Quorum*, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament. *Dalt. c.* 185.

Difference between general, quarter, and special sessions.

2. It seems that the *general* sessions, and *quarter* sessions, are not synonymous; but that the quarter sessions are a species only of the general sessions, and that such sessions only are properly called general quarter sessions, which are holden in the four quarters of the year in pursuance of the statute of the 2 *H.* 5. and that any other sessions holden at any other time for the general execution of the justices authority, which by the said statute they are authorized to hold oftner than at the times therein specified if need be, may be properly called *general* sessions, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called *special* sessions. 2 *Haw.* 42.

At what time the sessions shall be kept.

3. By the 12 *R.* 2. *c.* 10. The justices shall keep their sessions in every quarter of the year at least, and by three days, if need be;

be; on pain of being punished according to the discretion of the king's council, at the suit of every man that will complain.

And by the 2 *H.* 5. *st.* 1. *c.* 4. the particular time in every quarter of the year shall be as follows; to wit, in the first week after the feast of *St. Michael*, in the first week after the *Epiphany*, in the first week after the clause of *Easter*, and in the first week after the translation of *St. Thomas* the martyr; and more often if need be.

Except in *Middlesex*; where the justices shall keep their sessions twice in the year at least; and more often (if need be) for any riot or forcible entry. 14 *H.* 6. *c.* 4.

The strict, regular exposition of the abovesaid statute of the 2 *H.* 5. is, that if the feast day fall upon the *Sunday*, the sessions shall be held in the week following, and not the same week. 2 *H. H.* 49.

Yet it is very plain, that the quarter sessions are variously held in several counties, some at one day, some at another, yet it hath been ruled, that these are each of them good quarter sessions within the several acts that relate to quarter sessions; for these acts, especially the 2 *H.* 5. is only directive and in the affirmative, and therefore, tho' the sessions are held or another day, according to the general direction of the 12 *R.* 2. yet they are quarter sessions. 2 *H. H.* 50.

Where the sessions shall be holden.

4. There is no determination by any statute, of any particular place for the sessions to be kept, so it be within the county. And if a place within the county be incorporated, and have justices of its own, yet the same remains part of the county, and the justices of the county may notwithstanding hold their sessions there, altho' it may be that they shall not intermmeddle with matters arising there, save only such as happen in their sessions, or with relation thereunto. *Dalt. c.* 185.

Precept to summon the sessions.

5. And from hence it seems to follow, that any two such justices may direct their precept under their teste to the sheriff, for the summons of the sessions, thereby commanding him to return a grand jury before them, or their fellow justices at a certain day and place, and to give notice to all stewards, constables, and bailiffs of liberties, to be present and do their duties at such day and place, and to proclaim in proper places throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty. 2 *Haw.* 41.

And such precept should bear teste, or be dated, fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to summon and return the several juries, and to warn all officers and others that have business there, to attend. *Nelf.* 35.

And it is said that such a precept by any two such justices, cannot be superseded by any of their fellows, but only by writ out of chancery. 2 *Haw.* 41.

But the sessions without a previous summons is good, but then no man shall lose any thing for default of his appearance there, because no man had notice of their sitting. *Lamb.* 381. Nor can any one be compelled to appear there. L. *Raym.* 1238.

Mr. *Lambard* puts a case from Mr. *Marrow*, that if two or more justices appoint the sessions to be holden in one town, and so many more appoint a sessions in another town the same day, and holds they may be so held, and that the presentments in both are good; but that appearance at one, is a discharge of service at the other. But it may be well questioned whether they are not both void; for they make two courts of that which ought to be intire and but one: for it doth not appear that the justices are required or enabled to hold more than one sessions at a time, and so their authority being equal, and seeing no preference can be made by the priority of time, or nature of the service, they may be taken to be both void. However the justices, by whose forwardness such division happens, or on whom such miscarriage is chargeable, are punishable for the same by information and fine, or putting out of the commission, as the cause shall require. *Dalt. c.* 185.

Persons who are to appear there.

6. The persons who ought to appear at these sessions are as follows:

(1) The *justices of the peace*; these without doubt are compellable to appear at the sessions, for without their appearance the sessions cannot be holden. *Dalt. c.* 185.

But a justice ought not to join in an order at sessions wherein himself is concerned, nor ought his name to be in the caption. An order was quashed for that reason. 2 *Salk.* 607.

(2) The *custos rotulorum*, who hath custody of the rolls of sessions, ought (by the commission) to be there by himself, or by his deputy, who is the clerk of the peace. *Dalt. c.* 185.

(3) The *sheriff* also, by virtue of the commission, by himself or his deputy; to receive the fines, to return jurors, to execute process, and what else to his office doth appertain. *id.*

(4) All *coroners*. id.

(5) The *constables of hundreds* (that is, high constables) and all other officers to whom any warrant hath been directed, in order to make return thereof. *id.*

(6) All *bailiffs of hundreds and liberties*, in respect they are bound to give an account of all sessions process. *id.*

(7) The *gaoler*; to bring thither his prisoners, and to receive such as may be committed. *Dalt. c.* 185.

(8) The *keeper of the house of correction*, to give in a kalendar and account of persons in his custody. *id.*

(9) All *jurors* returned by the sheriff, by virtue of the aforesaid precept. And the jurors not appearing according to their summons, are punishable by loss of issues, which usually make part of the estreats of sessions. *id.*

(10) All persons bound by *recognizance* to answer, or to prosecute and give evidence. *id.*

Freedom of access to the sessions.

7. And all persons may freely attend at the sessions for the advancement of publick justice, and for the service of the king. And to this end they are (as it were) invited thither by a certain freedom of access, and by protection from common arrest; a thing that is incident to every court of record, and without which, justice would be greatly hindred. So that if a man come voluntarily

tarily to the sessions, either to prefer a bill of indictment, or to give information against another, or to tender a fine upon an indictment touching himself, or do come compelled to make appearance for saving his recognizance, and be arrested by the sheriff upon common and original process, in his coming thither, or during his tarrying there; it seemeth that (upon examination of the matter under his oath) he shall be discharged thereof by the privilege of this court, even as it is used in the higher courts at *Westminster*. *Lamb.* 402.

But Mr. *Hawkins* puts it more doubtfully, saying, It is questioned whether the sessions, as also all courts of record, may not discharge any person arrested, during his journeying to or from such courts, or necessary attendance there, by process from any other court: However it seems to be agreed, that any such court may discharge a person who shall be so arrested in the face of it. 2 *Haw.* 5.

T. 7 *G.* 2. It seemeth to have been agreed in the argument upon Col. *Pitts*'s case (which was an arrest in his return from parliament) that not only in the high court of parliament, but also in the inferior courts, the parties to the suit, and also the witnesses, are protected in going, continuing, and returning. And this returning hath never been very nicely scanned, so as to require a man to go the direct road: and the protection is not forfeited by the plea of *going out of the way*, because it may be the party went to buy a horse, victuals, or other necessaries for his journey. Neither is the law so strict in point of time, as to require a person to set out immediately after the trial is over; and for that was cited the case of *Hatch* and *Blisset*, *T.* 13 *An.* She had a trial at *Winchester* assizes, which was over on *Friday* at 4 in the afternoon: she staid there till after dinner on *Saturday*; and in the evening at 7 was arrested going home to *Portsmouth*, which is 20 miles: and the court held, that she ought to be discharged, her protection not being expired, and a little deviation or loitering would not alter it. *Str.* 987.

Who shall act in the sessions as solicitor.

8. By the 22 *G.* 2. *c.* 46. No person shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions, either with respect to matters of a criminal or civil nature, unless he is admitted and inrolled according to law; on pain of 50*l.* to him who shall sue in 12 months, with treble costs: And if any attorney shall permit any person to make use of his name in the said court, he shall in like manner forfeit 50*l.*

And no clerk of the peace, under-sheriff, or their deputies, shall act as solicitor, attorney, or agent, or sue out any process at such sessions, on the like pain of 50*l.*

The sessions may do what two justices may.

9. Where authority is given to two justices to do any act, the sessions may do it, in all cases, except where appeal is directed to the sessions. L. *Raym* 426.

Justices may bind over for offences cognizable at sessions.

10. Justices may issue their warrants for apprehending persons charged of crimes within the cognizance of the sessions, and bind them over to appear there, altho' the offender be not yet indicted. 1 *H. H.* 579.

Seſſions to proceed by indictment.

11. If juriſdiction be given to the ſeſſions, to hear and determine, and doth not ſay by information, this ſhall be by indictment, and not upon information. *Dalt. c.* 191.

Need not give their reaſons.

12. The ſeſſions are not obliged to give any reaſon of their judgment in the orders they make, no more than any other of the courts of law. 2 *Salk.* 607.

Orders may be altered the ſame ſeſſions.

13. By *Holt* Ch. J. The ſeſſions is all as one day, and the juſtices may alter their judgments at any time whilſt it continues. 2 *Salk.* 606.

Court equally divided.

14. In the caſe of *Thornby* and *Fleetwood*, *T.* 6 *G.* (which takes up above 60 pages in Sir *John Strange*'s reports; which was upon a writ of error in the king's bench brought againſt a judgment given in the court of common pleas) the court was equally divided; whereupon it was conſidered what was further to be done. And after ſeveral expedients, which were judged impracticable, the parties at laſt conſented that the judgment ſhould be affirmed, ſo that the caſe thereupon might come before the houſe of lords for a final determination. And *Pratt* Ch. J. delivered the opinion of the court thus: The plaintiffs in error move us for an affirmance: as to that you ſee the court is divided, and there can be no rule: but in this caſe, becauſe the party againſt whom it is to be affirmed, is deſirous and willing it ſhould be ſo, we are all of opinion that upon his conſent the judgment of the common pleas may be affirmed. But leſt this be brought in future ages as a precedent of an affirmance upon a diviſion, we direct the officer to make the rule ſpecial in this caſe, on recital of the difference in opinion amongſt the judges, and the conſent of the party. *Str.* 383, 4.

T. 8 *G.* 2. *K.* and the juſtices of *Weſtmorland.* Order of two juſtices of the borough for removing a poor family; appeal to the ſeſſions of the county, at which the juſtices were equally divided; ſo no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the juſtices of the county in general, to proceed on the appeal, And it was ſaid, that the juſtices ought in this caſe to have adjourned the appeal, or continued it over to a ſubſequent ſeſſions, till by the coming of more juſtices it might have been determined. *Seſſ. C. V.* 2. 193.

Or if the court ſhall be ſtill divided, as ſo it may happen in ſmall counties or towns corporate where the juſtices are but few, or where the number is reduced by reaſon of the reſt being intereſted; in order that the cauſe may not be hung up for ever, it may be adviſable (according to the courſe preſcribed in the caſe of *Thornby* and *Fleetwood* abovementioned) for the court, by conſent of the parties, to affirm or quaſh, and thereupon ſtate the caſe ſpecially, to be laid before the judges of aſſize, or rather before the court of king's bench; for the judges of aſſize are oftentimes ſufficiently employed with the proper buſineſs of the circuit, without being importuned with theſe matters of inferior conſequence.

Seſſions cannot refer.

15. A judge of *niſi prius* by conſent of parties may make a rule to refer a cauſe; but the ſeſſions cannot do ſo, tho' by conſent. They may refer a thing to another to examine, and make report

report to them for their determiuation, but cannot refer a thing to be determined by the other. 2 *Salk.* 477.

16. It seemeth certain, that the sessions hath no authority to amerce any justice, for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery: for it is a general rule, that *inter pares non est potestas*, it being reasonable rather to refer the punishment of persons in a judicial office, in relation to their behaviour in such office, to other judges of a superior station, than to those of the same rank with themselves. And therefore it seems to have been holden, that if a justice at the sessions, who is not of the *Quorum*, shall use such expressions towards another who is of the *Quorum*, for which if he were a private person he might be committed or bound to his good behaviour, yet the sessions hath no authority to commit him, or to bind him to his good behaviour: And yet it seems to be agreed, that if a justice give just cause to any person to demand the surety of the peace against him, he may be compelled by any other justice to find such security; for the publick peace requires an immediate remedy in all such cases. 2 *Haw.* 41, 42.

How far the sessions hath power over its own members.

17. The sessions may proceed to outlawry in cases of indictments found before them; and that, by the common law: and in cases of popular actions, by the statute of the 21 *J. c.* 4. But they cannot issue a *capias utlagatum*, but must return the record of the outlawry into the king's bench, and there process of *capias utlagatum* shall issue. 2 *H. H.* 52. *Lamb.* 521.

Whether they may issue a capias utlagatum.

But by the 12 *Co.* 103. They that have power to award process of outlawry, have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction.

18. Generally, the sessions cannot award an attachment for contempt in not complying with their orders; but the ordinary and proper method is by indictment. *H.* 8 *G.* 2. *K.* and *Bartlett. Sess. C. V.* 2. 176.

Whether they may award an attachment.

19. The justices are not punishable for what they do in sessions. *Stam.* 173.

Justices not punishable for what is done in sessions.

20. The manner of proceeding at the sessions, is as follows: First, the justices being met, the usual course is with 3 oyes to proclaim the sessions, and then read the commission of the peace. *Dalt. c.* 185.

Manner of proceeding in sessions.

21. Then the grand jury are called and sworn, and the charge given to them. *id.*

Commission read.

Grand jury sworn.

22. If there be any who are to take the oaths, in order to qualify them for offices, this must be done between the hours of 9 and 12 in the forenoon, and not otherwise. 25 *C* 2. *c.* 2. *s.* 2.

Taking oaths.

23. The king's proclamation against profaneness and immorality is also to be read; and likewise there are divers acts of parliament required to be read in the sessions, as the 5 *El. c.* 1. against popery, and the riot act 1 *G. c.* 5. and the black act 9 *G. c.* 22. And the 11 & 12 *W. c.* 15. about ale measures, 30 *C.* 2. *c.* 3. about burying in woollen, are required to be given in charge at the sessions. And the 4 & 5 *W. c.* 24. 7 & 8 *W. c.* 32. 3 & 4 *An. c.* 18. and 3 *G.* 2. *c.* 25. concerning jurors, are

Acts to be read.

to be read in *Midsummer* sessions yearly. And the 2 *G.* 2. *c.* 24. against bribery and corruption in elections of members of parliament is to be read at every *Easter* sessions.

Recognizances to give evidence called.

24. Then the recognizances may be called, especially such as are to prosecute and give evidence, that so bills may be drawn and prepared. *Dalt c.* 185.

Trying for felonies at the same sessions.

25. Altho' it is in many places used, to try a man for felony the same sessions in which the indictment is found, yet it seems highly reasonable, if the prisoner desire it to be deferred, and shew cause probable, to defer it. For that, 1. The sessions are holden oftner than the assizes. 2. The speedy trials seem to be in favour of the prisoner, and *volenti non fit injuria.* 3. If a traverse upon an indictment of nusance be not triable the same sessions that it is joined, but a man shall have time to provide for it; much more in matter of life, where usually the party is in prison, and may well be supposed less able to provide for it, and in the nature of it requires greater consideration. *Dalt. c.* 185.

And, in another place, it is said, that it is made a doubt, whether a trial can be had of a felon the same sessions he pleads, unless he consents to it. *Dalt. c.* 185.

Bills before the grand jury.

26. The bills being ready, the parties bound over for that purpose are sworn to give evidence upon the bills; and the course is, to bid the evidence go with the grand jury, where they consider of the bill, and either find it or not find it, and then return it. *id.*

Other business whilst the grand jury are gone out; such as motions, appeals, recognizances.

27. Whilst the jury is gone out of court, the usual way is, to proceed upon motions and orders touching settlements, bastardy, nusances, and the like; and to call persons bound over to the peace or good behaviour, but it may not be best to discharge them till the end of the sessions, because bills may be preferred against them. *id.*

Errors in form to be amended.

28. Upon appeals to be made to the sessions against judgments or orders, the justices shall cause any defect of form in such original judgments or orders, to be rectified and amended, and then shall proceed upon the merits. 5 *G.* 2. *c.* 19. *s.* 1.

Certificates of nusances removed.

29. Mr. *Shaw* (Tit. *Sessions*) says, no indictment for a nusance shall be quashed or discharged, unless two justices do certify to the court upon their own view, either by certificate under their hands or in person, that the nusance is removed; and for this he quotes 3 *Cro.* 584. *Layton*'s case. But that case only mentions a certificate in general, and the certificate in that case was not a certificate of two justices, but of several inhabitants adjoining; and it should seem that the sessions may be well satisfied of such removal of a nusance, by other evidence, as well as by that of two justices.

Traverses tried.

30. Then may be called the persons bound by recognizance at the last sessions, to prosecute their traverses at the present sessions. For if a person indicted of a trespass or other misdemeanor, do appear, and shall plead not guilty, and traverse the indictment, he shall enter into recognizance to prosecute his traverse at the next quarter sessions. For in *Bumstead*'s case, 11 *C.* The whole court was of opinion, that justices of the peace may not inquire,

try,

try, and determine civil offences, in one and the same day; for the party ought to have a convenient time to provide for the trial. *Cro. Car.* 448.

And on the trial of a traverse, the defendant must appear in the court, at the bar, in his proper person; and then the indictment is read to the jury; and the prosecutor and his witnesses are called to give evidence, and are heard; and if the defendant is found guilty, the court sets a fine upon him adequate to the offence, or other punishment as the law directs. *Crown Cir.* 50, 51.

In case of trespass and assault, the court frequently recommends the defendants to talk with the prosecutor, that is, to make him amends for the injury done him; and if the prosecutor comes and acknowledges a satisfaction received, the court will set a small fine on the defendant, as 3*s.* 4*d.* or 12*d.* *Cro. Cir.* 52.

Sometimes the prosecutor and defendant agree, before the defendant pleads to the indictment; and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon proving, by a subscribing witness, a general release executed by the prosecutor, the defendant submits to a small fine, such as the court is pleased to impose. *Cro. Cir.* 52.

There are frequent prosecutions at the sessions for trifling assaults, in which cases it is advisable for a defendant not to put himself to the expence of trying the indictment; but to give notice to the prosecutor, that he intends to plead guilty to the indictment; in which case the prosecutor attends the court with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his misbehaviour towards the prosecutor: But before that is done, the court will admit the defendant to call such witnesses as he desires, and will examine them by way of mitigation. *Cro. Cir.* 54.

31. And because the arraignment and trial of prisoners is a great part of the business of the sessions, I will take notice of some parts thereof, and proceedings thereupon: Trial for petit larceny and other felonies.

Towards the end of the sessions, when it appears what bills are come in against the prisoners, the gaoler being called to set his prisoners to the bar, and the crier being called to make a bar, that is, to dispose of the company, that a way be made open from the court to the prisoners, that the court, jury, and prisoners may see each other, one of the prisoners is called to; *A. B.* hold up thy hand. *Dalt. c.* 185. Arraignment.

Yet it is not necessary that he hold up his hand at the bar, or be commanded so to do; for this is only a ceremony, for making known the person of the prisoner to the court, and if he answers that he is the same person, it is all one. 2 *Hawk.* 308. Holding up the hand.

Then he is acquainted with the effect of the charge laid against him, Thou *A. B.* standest indicted, by the name of *A. B.* for that thou ——— (and so recite the indictment). How sayest thou, *A. B.* Art thou guilty of this felony and petit larceny whereof thou standest indicted, or not guilty? *Dalt. c.* 185. Guilty or not guilty.

If he make no answer at all, and will not plead, it is best to ask him three or more times, and to tell him the danger of standing mute, and the grievousness of the judgment of the *peine fort* Mute.

& dure; and yet if he will stand mute, nothing more can be done concerning him till judgment, but to record it. *id.*

But if it be for petit larceny only, he shall not be put to his *peine fort & dure*, as in case of grand larceny, but he shall have the like judgment as if he had confessed the indictment. 2 *Haw.* 329.

Privilege. If he pleads privilege, it hath been adjudged, that where proceedings are merely at the suit of the king, as upon indictment, or upon information brought by the attorney general, no privilege shall be allowed; but where the proceedings are at the suit of the king and of the party, as in case of a common informer, there the defendant may have his privilege. 1 *Lutw.* 62.

Confession. If he answer that he is guilty, then the confession is recorded, and no more done till judgment. *Dalt. c.* 185.

Trial by the country. But if he say, not guilty, he is then asked; *culp prit*, how wilt thou be tried? *Dalt. c.* 185.

Which was formerly a very significant question, tho' it is not so now; because anciently trial by battel, and trial by ordeal was used, as well as by the country, or a jury.

Therefore it is now usually answered, By god and the country. *Dalt. c.* 185.

Humanity towards the prisoner. Mr. *Hawkins* observes, that every person at the time of his arraignment, ought to be used with all the humanity and gentleness which is consistent with the nature of the thing, and under no other terror or uneasiness than what proceeds from a sense of his guilt, and the misfortune of his present circumstances; and therefore ought not to be brought to the bar in a contumelious manner, as with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet, unless there be some danger of a rescous or escape. 2 *Haw.* 308.

And the court ought to exhort him to answer without fear, and to acquaint him that he shall have justice done to him. 2 *Inst.* 316.

Witnesses called. Next, the prisoner having put himself upon his country, the prosecutors are called on their recognizances to give evidence. *Dalt. c.* 185.

Jury called. Then the jury are called on their panel, thus, You good men that are returned and impanelled, to try the issue joined between our sovereign lord the king, and the prisoner at the bar, answer to your names. *Dalt. c.* 185.

Proclamation. Which done, and they appearing a full jury, a proclamation is made; If any can inform the king's attorney, or this court, of any treasons, murders, felonies, or other misdemeanors against *A. B.* the prisoner at the bar, let them come forth, for the prisoner stands upon his deliverance. *Dalt. c.* 185.

Challenge. Then it is said to the prisoner, You prisoner at the bar, the persons that you shall now hear called, are to pass upon your trial (upon your life and death, if it is a capital offence); if you will challenge them, or any of them, you must challenge them as they come to the book to be sworn, and before they be sworn. *Dalt. c.* 185.

Then

Then call the foreman of the jury, and say unto him, Lay your hand on the book, and look upon the prisoner; You shall well and truly try, and true deliverance make, between our sovereign lord the king, and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to your evidence: So help you god. Jury sworn.

Then call the second, and so swear him in like manner, and so on to 12, and neither more nor less. 2 *H. H.* 293.

Then count them 12, and say, You good men that are sworn, you shall understand, that *A. B.* now prisoner at the bar, stands indicted, for that he ——— (and so recite the indictment): To which indictment he hath pleaded not guilty, and for his trial hath put himself upon god and the country, which country you are; so that your charge is, to inquire whether he be guilty of the felony or petit larceny whereof he stands indicted, or not guilty; If you find him guilty, you shall say so, and inquire what goods and chattels he had at the time of the said felony and petit larceny committed, or at any time since: (Or, if it be for felony above petit larceny, — then, what goods and chattels, lands and tenements he had at the time of the said felony committed, or at any time since:) If you find him not guilty, you shall inquire, whether he did fly for it, and if you find that he fled for it, you shall inquire what goods and chattels he had at the time of such flight. If you find him not guilty, and that he did not fly for it, you shall say so, and no more: and so hear your evidence. 2 *H. H.* 293, 294. *Dalt. c.* 185. Jury charged.

Then call the witnesses, and swear them, one by one, thus: *The evidence that you shall give on the behalf of our sovereign lord the king, against* A. B. *prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: So help you god.* Dalt. c. 185. Witnesses sworn.

When the witnesses for the king have been examined, if the prisoner desires that any witnesses should be examined for him, they must be examined also on oath. Witnesses for the prisoner.

On trials of this nature, the prisoner shall not have counsel allowed to him, unless a point of law arise, proper to be debated; nor a copy of the indictment. 2 *Haw.* 400, 402. Prisoner not to have counsel.

But in offences under felony, a defendant may be heard by his counsel. *Wood* 1098.

Otherwise, the court is to be of counsel with the prisoner, and ought to advise him for his good, and not take advantages too strictly against him. *Dalt. c.* 185. Court to be of counsel with him.

When the prisoner hath done, and hath been heard all he hath to say in his defence, the evidence is summed up by the court to the jury. And if they cannot agree on their verdict at the bar, a bailiff must be sworn to keep the jury, thus; *You shall swear that you shall keep this jury, without meat, drink, fire, or candle; you shall suffer none to speak to them, neither shall you speak to them your self, but only to ask them whether they are agreed: So help you god.* id. Evidence summed up.

The jury coming back, the prisoner is brought to the bar; then the jury is called; they appearing, say, Set *A. B.* to the bar; Verdict.

bar; Who being there, say, Look upon the prisoner; how say you, is *A. B.* guilty of the felony (or as the case is) whereof he stands indicted, or not guilty? If they say, not guilty, bid him down upon his knees. If they say, guilty; record it, and bid him be taken away. Then say, hearken to the verdict as the court hath recorded it; You say, *A. B.* is guilty [or, is not guilty] of the felony whereof he stands indicted. *id.*

Judgment.

Then make a proclamation and say, All manner of persons keep silence, whilst judgment is giving against the prisoner at the bar, upon pain of imprisonment. Then set the prisoner to the bar, and give the sentence. *id.*

Wages of the justices, and estreats.

32. By the 12 *R.* 2. *c.* 10. The justices shall take for their wages 4*s.* the day for the time of their sessions, and their clerk 2*s.* of the fines and amerciaments rising and coming of the same sessions, by the hands of the sheriffs. And the lords of franchises shall be contributary to the said wages, after the rate of their part of fines and amerciaments.

But no duke, earl, baron, or baneret, shall take any wages. 14 *R.* 2. *c.* 11.

And the estreats of the justices shall be doubled, and the one part delivered by them to the sheriff, to levy the money thereof rising, and thereof to pay the justices their wages by the hand of the sheriff, by indenture betwixt them thereof to be made. 14 *R.* 2. *c.* 11.

Fees in sessions.

33. The fees in sessions for traversing, trying, or discharging indictments, discharging recognizances of the peace and good behaviour, and the like, do vary according to the custom of the country; and in that place the custom of the place is to be observed. *Dalt. c.* 41.

By *Holt* Ch. J. The court cannot commit for non-payment of fees; for if there is right, there is remedy; and *indebitatus assumpsit* will lie, if the fee is certain; if uncertain, *quantum meruit.* L. *Raym.* 703.

Precept to summon the sessions.

Westmorland. J. P. *and* K. P. *esquires, justices of our sovereign lord the king, assigned to keep the peace in the county of* ——— *aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and one of us the* Quorum; *To the sheriff of the same county, greeting: On the behalf of our said sovereign lord the king, we command you, that you omit not by reason of any liberty within your county, but that you enter therein, and that you cause to come before us, or others, justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on* ——— *the* ——— *day of* ——— *now next ensuing, at the hour of ten in the forenoon of the same day, at* ——— *in the said county, 24 good and lawful men of the body of the county aforesaid, then and there to inquire, present, do and perform, all and singular such things, which on the behalf of our said sovereign lord the king shall be injoined them:*

And

Also that you make known to all coroners, keepers of gaols and of houses of correction, high constables, and bailiffs of liberties, within the county aforesaid, that they be then there to do and fulfil those things which by reason of their offices shall be to be done: Moreover, that you cause to be proclaimed thro' the said county in proper places the aforesaid sessions of the peace to be held at the day and place aforesaid: And do you be then there, to do and execute those things which belong to your office: And have you then there as well the names of the jurors, coroners, keepers of gaols, and of houses of correction, high constables, and bailiffs aforesaid, as also this precept. Given under our seals at A. *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

When the sheriff hath received this precept, he must direct several warrants to the several bailiffs of hundreds and liberties, containing in them the substance of the said precept.

The stile of the sessions.

Westmorland. THE *general quarter sessions of the peace, holden at* ——— *in and for the said county, on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the second, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth, before* J. P. *and* K. P. *esquires, and others, justices of our said sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the* Quorum, *and so forth.*

Note, It is not sufficient to say, held at such a place such a day *by adjournment*; but it must appear when the original sessions began, and that it was regularly continued to such adjournment. *Str.* 832, 865.

Condition of a recognizance to appear and give evidence at the sessions, in case where the king is a party.

THE *condition of this recognizance is such, that if the abovebound* A. W. *shall personally appear at the next general quarter sessions of the peace, to be holden at* ——— *in and for the county of* ——— *and then and there give such evidence as he knoweth, against* ——— *concerning his felonious taking and carrying away* ——— *the property of* ——— *and do not depart thence without leave of the said court, then this recognizance to be void.*

Subpœna

Subpœna to give evidence, in case where the king is not party.

GEORGE *the Second*——*To* A. W. B. W. *and* C. W. *of* —— *yeomen, greeting. We command you, and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices assigned to keep our peace in the county of* —— *and also to hear and determine divers felonies, trespasses, and other misdemeanors in our said county committed, at the session of the peace to be holden at* —— *in and for the said county, on* —— *the* —— *day of* —— *now next ensuing, at the hour of ten in the forenoon of the same day, to testify all and singular those things, which you, or any of you, shall know, in a certain appeal now depending between the churchwardens and overseers of the poor of the parish of* —— *appellants, and the churchwardens and overseers of the poor of the parish of* —— *removants, touching and concerning the removal of* A. P. *from the said parish of* —— [Or, in case where the king is a party, —— *to testify the truth and give evidence on our behalf, against* A. O. *in a case of trespass and assault*] *And this you and every of you are in no wise to omit, under the penalty of* 10 l. *for you and every of you. Witness* J. P. *esquire, the* —— *day of* ——.

Note; There may be four witnesses put in one *subpœna*.

A *subpœna* ticket for a witness.

MR. A. W. *By virtue of a writ of* subpœna, *to you and others directed, and herewith shewn unto you, you are required personally to be and appear at the next general quarter sessions of the peace to be holden at* —— *in and for the county of* —— *to testify the truth according to your knowledge in a certain appeal now depending, between the churchwardens and overseers of the poor of the parish of* —— *appellants, and the churchwardens and overseers of the poor of the parish of* —— *removants, concerning the removal of* A. P. *from the said parish of* —— *to the said parish of* —— *on the part of the said appellants: And herein you are not to fail, on pain of* 10 l. *Dated the* —— *day of* —— *in the* —— *year* ——.

Sewers.

BY the 23 *H.* 8. *c.* 5. Commissions of sewers shall be issued, in all parts of the realm, where need shall require.

And by the 13 *El. c.* 9. For one year after the expiration of a commission of sewers, the justices of the peace, or six of them,

(z 2.) may exeeute the powers of the ſaid commiſſion, unleſs a new commiſſion ſhall be iſſued in the mean time.

But as the power and authority of theſe commiſſioners of ſewers is not general enough to fall in with the deſign of this book, I ſhall chuſe to refer thoſe whom it may particularly concern, to the ſtatutes at large which treat of this title; namely

23 *H.* 8. *c.* 5.
25 *H.* 8. *c.* 10.
3 & 4 *Ed.* 6. *c.* 8.
7 *An.* *c.* 10.

Beſides which general acts, there are others which concern the cities of *London* and *Weſtminſter* only, and other places within the bills of mortality; to wit,

3 *J.* *c.* 14.
19 *C.* 2. *c.* 3. *ſ.* 20.
22 & 23 *C.* 2. *c.* 17.
2 *W.* *ſeſſ.* 2. *c.* 8.
8 & 9 *W.* *c.* 37.

Sheep.

1. BY the 25 *H.* 8. *c.* 13. For the preventing many farms being accumulated into few hands, and for the encouragement of tillage, it is enacted, that no perſon ſhall have above 2000 ſheep at one time, at ſix ſcore to the hundred, except it be upon his own inheritance only, and except what are neceſſary for his houſhold; on pain of forfeiting 3 *s.* 4 *d.* for every ſheep above that number, half to the king, and half to him that will ſue. None ſhall have above 2000 ſheep.

And if any perſon ſhall happen to have more, by reaſon of being executor or adminiſtrator, he ſhall ſell off within a year, till he have but 2000.

But ſheep bequeathed to a child within age, ſhall not be reckoned in the number.

And lambs are not to be reckoned ſheep, till the ſecond *Midſummer* after they are lambed.

And the juſtices of the peace may enquire of this offence by a jury, or by information.

2. And for the ſame reaſon, no perſon ſhall take above two farms with houſes thereon; nor ſhall any perſon have two, except he dwell in the pariſh where they both are; on pain of 3 *s.* 4 *d.* a week in like manner. *id.* None ſhall have above two farms.

3. By the 8 *El.* *c.* 3. No perſon ſhall ſend or carry over ſea, or receive into any ſhip for that purpoſe, any ſheep alive; on pain for the firſt offence, of forfeiting all his goods, half to the king, and half to him that will ſue, and being impriſoned for a year, and at the year's end in ſome open market town, in the fulneſs of Carrying ſheep over ſea.

the

the market, on the market day, he ſhall have his left hand cut off, and nailed up in the openeſt place of the market; And for the ſecond offence, ſhall be adjudged a felon, and ſhall ſuffer death as in caſes of felony; But not to work corruption of blood. And the juſtices of the peace may enquire of, hear and determine the ſame.

But the offender may have his clergy, as well in the caſe of the cutting off his hand, as in the caſe of felony. 3 *Inſt.* 104.

And by the 12 *C.* 2. *c.* 32. No perſon ſhall export, or lay on board with intent to export any ſheep, except wether ſheep for the ſhip's uſe only; on pain of forfeiting the ſame, and for every ſheep 20 *s.* half to the king, and half to him that ſhall ſue, at the ſeſſions, or elſewhere. And the owner of the ſhip, knowing the offence, ſhall forfeit his intereſt in the ſhip and furniture. And the maſter and mariners aſſiſting, ſhall forfeit, in like manner, all their goods and chattels, and be impriſoned three months. And any merchant or other perſon offending herein, ſhall be diſabled to require any debt or account from any factor or other. And the offender may be tried in the county from whence they were exported, or where he ſhall be apprehended. Proſecution to be in one year. And if the ſhip belongs to an alien, it ſhall be forfeited to the king.

Killing ſheep in the night.

4. If any perſon ſhall in the night time maliciouſly and willingly kill any ſheep; he ſhall be guilty of felony: but to avoid judgment of death, he may make his election to be tranſported for ſeven years. And three juſtices (1 *Q.*) may hear and determine the ſame. 22 & 23 *C.* 2. *ſ.* 7.

Hurting ſheep in the night.

5. If any perſon ſhall in the night time maliciouſly and willingly maim, wound, or otherwiſe hurt any ſheep, whereby the ſame is not killed; he ſhall forfeit to the party grieved treble damages, by action of treſpaſs or on the caſe. 22 & 23 *C.* 2. *c.* 7.

Sheep ſtealing or killing, 10 *l.* reward.

6. If any perſon ſhall feloniouſly drive away, or in any other manner feloniouſly ſteal any ſheep or lamb; or ſhall wilfully kill any ſheep or lamb, with a felonious intent to ſteal the carcaſe or any part thereof; or ſhall aſſiſt or aid in committing any the ſaid offences; he ſhall be guilty of felony without benefit of clergy. 14 *G.* 2. *c.* 6. *ſ.* 1. 15 *G.* 2. *c.* 34.

And every perſon, who ſhall apprehend and proſecute to conviction any ſuch offender, ſhall have a reward of 10 *l.* In order to which, he ſhall have a certificate ſigned by the judge, before the end of the aſſizes, certifying ſuch conviction, and where the offence was committed, and that the offender was apprehended and proſecuted by the perſon claiming the reward; and if more than one claim the reward, he ſhall therein appoint what ſhare ſhall be paid to each claimant: Which certificate being tendred to the ſheriff, he ſhall pay the ſame within a month. without deduction, on pain of forfeiting double, with treble coſts: The ſame to be allowed on his accounts, or to be repaid him out of the treaſury. 14 *G.* 2. *c.* 7. *ſ.* 2, 3.

Sheriff.

1. SHERIFF *(Shireve)* in *Saxon* is *ſcirgerefa*, from *ſcirar*, to *ſhare* or divide, for that the whole realm is parted and divided into *ſhires*; and *gerefa*, the *comes*, earl, or governor, in the *Belgick* called *graef* or *grave*. The word *comes*, or *count*, came firſt into *Europe* out of the eaſtern countries, probably from the *Hebrew cône* or *cûne*, which denoteth ſtrength, firmneſs, or ſtability; and the word *county*, in *Latin comitatus*, ſeemeth to be nothing elſe but the diviſion or allotment over which the *comes* or *count* had juriſdiction. And when the counts or earls left the cuſtody of the counties, then was the cuſtody thereof committed to the *viſcounts*, or *vicecomites* (which is the *Latin* name for the ſheriffs); ſo called, becauſe they ſupply the place of the *comes* or earl. The *earl* was otherwiſe called by the *Saxons eorl*, *ealdor*, *ealdorman* (elder, or alderman), becauſe they were uſually men of age and experience; by a like derivation as that of *ſenators* among the *Romans*. Sheriff, what.

2. By four ſeveral ſtatutes it is enacted, that none ſhall be ſheriff, except he have ſufficient land within the ſhire, to anſwer the king and his people. 9 *Ed.* 2. *ſt.* 2. 4 *Ed.* 3. *c.* 9. 5 *Ed.* 3. *c.* 4. 13 & 14 *C.* 2. *c.* 21. Who ſhall be ſheriff.

3. At the common law, the ſheriff was choſen by the county; but now by the ſtatute of the 14 *Ed.* 3. *c.* 7. he ſhall be appointed yearly on the morrow of *All Souls*, at the exchequer, by the chancellor, treaſurer, and chief baron, taking to them the chief juſtices. How choſen.

Except in *London*, and where the office is a man's freehold or inheritance. 23 *H.* 6. *c.* 8.

4. The ſheriff (except in *Wales* and *Cheſter*) at the entring upon his office ſhall take the following oath (to be adminiſtred in purſuance of a writ of *dedimus poteſtatem*); His oath of office.

I A. B. *do ſwear, that I will well and truly ſerve the king's majeſty in the office of ſheriff in the county of* ——— *and promote his majeſty's profit in all things that belong to my office, as far as I legally can or may; I will truly preſerve the king's rights, and all that belongeth to the crown; I will not aſſent to decreaſe, leſſen, or conceal the king's right, or the rights of his franchiſes; And whenſoever I ſhall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchiſes, ſuits, or ſervices, or in any other matter or thing, I will do my utmoſt to make them be reſtored to the crown again; and if I may not do it my ſelf, I will certify and inform the king thereof, or ſome of his judges; I will not reſpite or delay to levy the king's debts, for any gift, promiſe, reward, or favour, where I may raiſe the ſame without great grievance to the debtors; I will do right, as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man, for any gift, reward, or promiſe, nor for favour or hatred; I will diſturb no man's right, and will truly and faithfully acquit at the exchequer, all thoſe of whom I ſhall receive any debts or*

duties belonging to the crown; I will take nothing whereby the king may lose, or whereby his right may be disturbed, injured, or delayed; I will truly return, and truly serve all the king's writs, according to the best of my skill and knowledge; I will take no bailiffs into my service, but such as I will answer for, and will cause each of them to take such oaths as I do, in what belongeth to their business and occupation; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected, or procured, as is appointed by the statutes of this realm; I have not sold or let to farm, nor contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for, or grant for reward or benefit, by my self or any other person for me, or for my use, directly or indirectly, my sheriffwick, or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons whatsoever; I will truly and diligently execute the good laws and statutes of this realm; and in all things well and truly behave my self in my office, for the honour of the king, and the good of his subjects, and discharge the same according to the best of my skill and power: So help me god. 3 G. c. 15. s. 18, 19.

Sheriff selling inferior offices.

5. By the 4 *H.* 4. *c.* 5. The sheriff in person shall continue within his bailiwick, and shall not let it to farm.

And by the 3 *G. c.* 15. *s.* 10. None shall buy, sell, let, or take to farm the office of under sheriff, gaoler, bailiff, or other office pertaining to the office of high sheriff; on pain of 500 *l.* half to the king, and half to him that shall sue (in two years).

Sheriff's officers not to be attornies, or jurors.

6. By the 1 *H.* 5. *c.* 4. Sheriff's officers shall not be attornies.

And the sheriff shall return none of his officers upon inquests: on pain of 40 *l.* half to the king, and half to him that shall sue, in the sessions, or elsewhere. 23 *H.* 6. *c.* 10.

Appointment of the under sheriff.

7. The under sheriff shall be appointed by the high sheriff, because he shall answer for him; and he shall take the like oath as the high sheriff, *mutatis mutandis.* 3 *G. c.* 15. *s.* 19.

Appointment of bailiffs.

8. The bailiffs also shall be appointed by him for the like reason; and every bailiff, when he gives security upon entring into his office, shall make it part of the condition of such security, that he will deliver a copy of the clause in the act of the 2 *G.* 2. *c.* 22. concerning the carrying of prisoners for debt to alehouses, which is inserted more at large in title **Gaoler.**

And such bailiff, or other person returning juries, or intermeddling with processes, shall take the following oath of office, before a judge of assize, or the *custos rotulorum,* or two justices of the peace (1 Q.);

I A. B. *shall not use or exercise the office of bailiff corruptly, during the time that I shall remain therein, neither shall or will accept, receive, or take, by any colour, means, or device whatsoever, or consent to the taking of any manner of fee or reward of any person or persons, for the impanelling or returning of any inquest, jury, or tales, in any court of record, for the king, or betwixt party and party, above 2 s. or the value thereof, or such fees as are allowed and appointed for the same by the laws and statutes of this realm,*

realm, but will according to my power, truly and indifferently, with convenient speed, impanel all jurors, and return all such writ or writs touching the same, as shall appertain to be done by my duty or office, during the time that I shall remain in the said office: So help me god. 27 El. c. 12. s. 2.

And persons acting before they have taken the said oath, shall forfeit 40*l.* half to the king, and half to him that shall sue, in the sessions, or other court of record. *id. s.* 4, 6.

And if they commit any act contrary to their said oath, they shall forfeit (in like manner) to the party grieved his treble damages. *id. s.* 5.

And the sheriff's bailiffs shall not be in the same office in three years after. 1 *H.* 5. *c.* 4. Except in *London*, *Middlesex*, *Durham*, *Westmorland*, and towns being counties of themselves. 3 *G. c.* 15. *s.* 21.

9. The sheriff hath a jurisdiction both in criminal and civil cases; and for this purpose he hath two courts, his *tourn* for criminal causes, which is therefore the king's court; the other is his *county court* for civil causes, and this is the court of the sheriff himself. 3 *Salk.* 322.

The sheriff's two courts; the torn, and county court.

10. The new sheriff being appointed and sworn, he ought at or before the next county court, to deliver a writ of discharge to the old sheriff, who is to set over all the prisoners in the gaol severally by their names (together with all his writs), precisely, by view and indenture between the two sheriffs; wherein must be comprehended all the actions which the old sheriff hath against every prisoner, tho' the executions are of record. And till the delivery of the prisoners to the new sheriff, they remain in the custody of the old sheriff, notwithstanding the letters patents of appointment, the writ of discharge, and the writ of delivery. Neither is the new sheriff obliged to receive the prisoners, but at the gaol only. But the office of the old sheriff ceases, when the writ of discharge cometh to him. *Wood* 119.

Sheriff's receiving the accounts of his predecessor.

And by the 20 *G.* 2. *c.* 37. The old sheriff shall turn over to his successor, by indenture and schedule, all such writs and process as shall remain unexecuted; and the new sheriff shall execute and return the same.

11. The sheriff having a justice of the peace his warrant directed to him, shall execute the same; but he need not go in person to execute it, but may authorize another to do it. 2 *Haw.* 86.

Sheriff how far amenable to the justices of the peace.

And it is no excuse to the sheriff to return that he could not execute a precept because of resistance; for he may take with him the power of the county. 13 *Ed.* 1. *st.* 1. *c.* 39.

Also the sheriff, on summons, is bound to attend the sessions of the peace, there to return his precepts, to take the charge of the prisoners, to receive fines for the king, and the like. 2 *Haw.* 41.

And it seems clear from the general reason of the law, which gives all courts of record a kind of discretionary power over all abuses by their own officers, that the sheriff is punishable by the justices in sessions, for defaults in executing their writs and precepts. 2 *Haw.* 142, 143.

Sheriff a conservator of the peace, but not to act as justice.

12. Every sheriff is a principal conservator of the peace, by the common law, and may *ex officio* award process of the peace, and take surety for it; and it seems to be the better opinion, that the security so taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 *Haw.* 33.

But no sheriff shall exercise the office of a justice of the peace, in any county wherein he is sheriff; and in such case, his acts as a justice shall be void. 1 *Mar. sess.* 2. *c.* 8.

Sheriff to have the keeping of gaols.

13. By the 14 *Ed.* 3. *c.* 10. and 19 *H.* 7. *c.* 10. The sheriff shall have the keeping of gaols.

And in all *civil* causes, as in cases of imprisonment for debt, the sheriff or gaoler (at the election of the party) shall be answerable for escapes suffered by the gaoler; but if the gaoler suffer a *felon* voluntarily to escape, this inasmuch as it reacheth to life, is felony only in the gaoler, but the sheriff may be indicted, fined, and imprisoned. 1 *H. H.* 597.

Sheriff answerable for money levied by him.

14. Where the sheriff levies money on a *fieri facias*, the plaintiff may have an action of debt against him for the money, because it was received by him to the plaintiff's use, and the defendant is discharged of it; and it lies against his executors if he die. 3 *Salk.* 323.

Passing his accounts.

15. The manner of passing his accounts is directed at large by the statutes of the 3 *G. c.* 15 & 16. which, being foreign to our purpose, are not here inserted.

Paying rewards for convicting offenders.

16. But after the sheriff hath paid the rewards for apprehending highwaymen, housebreakers, and such like, he shall not be obliged to tarry until the passing of his accounts for the repayment thereof, but he may immediately apply to the commissioners of the treasury, who shall upon inspecting the certificate of the conviction, and the receipts of the persons to whom the rewards were paid, forthwith repay the same to the sheriff without fee. 3 *G. c.* 15. *s.* 4.

How long he shall continue in office.

17. No sheriff shall continue in his office above one year. 14 *Ed.* 3. *c.* 7. 28 *Ed.* 3. *c.* 7. Except in *London*, *Middlesex*, and towns being counties of themselves, and where the office is a man's freehold, or inheritance. 23 *H.* 6. *c.* 8. 3 *G. c.* 15. *s.* 21.

And by the 1 *R.* 2. *c.* 11. None that hath been sheriff shall be so again within 3 years, if there be other sufficient.

But by the 17 *Ed.* 4. *c.* 6. The sheriff may hold his office after the year, during *Michaelmas* and *Hilary* terms, if not before lawfully discharged.

Sheriff dying before the expiration of his office.

18. If the sheriff shall die before his office shall be expired, the under sheriff shall execute the same in the deceased sheriff's name, till a new sheriff be sworn, and be answerable for the execution thereof, as the deceased sheriff would have been. 3 *G. c.* 15. *s.* 8.

Ships.

1. IF any owner of, or captain, maſter, mariner, or other officer belonging to any ſhip, ſhall wilfully caſt away, burn, or otherwiſe deſtroy the ſhip of which he is owner, or unto which he belongeth, or in any wiſe direct or procure the ſame to be done; with intent to prejudice any perſon that ſhall underwrite any policy of inſurance thereon, or any merchant that ſhall load goods thereon; he ſhall be guilty of felony without benefit of clergy. 11 *G. c.* 29. *ſ.* 6. Wilfully deſtroying.

And if it is committed within the body of a county, it ſhall be tried there; if on the high ſeas, it ſhall be tried as in caſes of piracy. *ſ.* 7.

And by the 20 *G.* 2. *c.* 52. The ſaid offence is excepted out of the general pardon.

2. By the 12 *An. ſt.* 2. *c.* 18. and 26 *G.* 2. *c.* 19. If any perſon ſhall plunder any ſhip in diſtreſs, or wilfully do any thing tending to the immediate loſs of ſuch ſhip; he ſhall be guilty of felony without benefit of clergy. Plundering or deſtroying a ſhip in diſtreſs.

3. All perſons who ſhall feloniouſly ſteal any goods of the value of 40*s.* in any ſhip, boat, or veſſel, on any navigable river, or in any port of entry or diſcharge, or from any wharf or key, or ſhall be preſent and aſſiſting therein; he ſhall be guilty of felony without benefit of clergy. 24 *G.* 2. *c.* 45. Stealing goods from on ſhipboard.

Shoemakers.

THE ſhoemakers duty in the true making of ſhoes, is inſerted in the title Leather.

Differences between ſhoemakers and their workmen, are treated of under the title Servants.

Silks.

THE *duties* on ſilks and callicoes, being under the ſame regulations with the duties on printed linens, the law concerning them is inſerted under the article of *linen cloth* in the title Exciſe.

Concerning ſervants and other workmen in the ſilken manufactures, ſee title Servants.

1. No perſon ſhall exerciſe the trade of a ſilk thrower, unleſs he hath ſerved 7 years apprenticeſhip; on pain of 40*s.* a month, Silk thrower.

half to the king, and half to him that ſhall ſue in any court of record, or at the aſſizes, or quarter ſeſſions of the peace. 13 & 14 *C.* 2. *c.* 15. *ſ* 2.

Alamodes and luteſtrings.

2. By the 9 & 10 *W.* *c.* 43. No foreign ſilks, called alamodes or luteſtrings, ſhall be imported, but in the port of *London*, on notice firſt given to the commiſſioners of the cuſtoms, and licence had from them. *ſ.* 1.

And if they be imported elſewhere, or without ſuch notice and licence, and the duties paid, they ſhall be forfeited, or the value thereof, and be ſold and exported again; and the offender ſo importing, and alſo the receiver, and perſon offering to ſell the ſame, ſhall forfeit 500 *l.* *ſ.* 3.

And the commiſſioners ſhall cauſe them to be marked and ſealed. *ſ.* 2.

And if any perſon ſhall counterfeit the cuſtom houſe ſeal, or ſeal of the luteſtring company; he ſhall forfeit 500 *l.* and be ſet in the pillory two hours. *ſ.* 5.

And any perſon who ſhall buy or ſell or have in his cuſtody any alamodes or luteſtrings, ſealed or marked with a counterfeit ſeal or mark, ſhall forfeit the ſame and 500 *l.* *ſ.* 5.

And any perſon authorized by writ of aſſiſtance under the ſeal of the exchequer, or with a conſtable or other publick officer, inhabiting near the place, with a warrant from a juſtice of the peace, and in the day time, may enter any houſe, ſhop, cellar, warehouſe, or other place, to ſearch for and ſeize any alamodes or luteſtrings imported contrary to this act, or not ſealed or marked, or marked with a counterfeit mark or ſeal, and in caſe of reſiſtance may break open doors, cheſts, trunks, and other package; and every juſtice ſhall grant ſuch warrant to any credible perſon, making oath that he hath reaſon to ſuſpect or believe, that there are ſome of the ſaid ſilks ſo fraudulently imported, or not ſealed and marked, or ſealed or marked with a counterfeit ſeal or mark in the place or places where he intends to ſearch. *ſ.* 5.

And all officers belonging to the cuſtoms, ſheriffs, mayors, bailiffs, conſtables, and other officers, ſhall be aiding in the execution hereof. *ſ.* 6.

(But none but cuſtomhouſe officers, or perſons deputed by the luteſtring company, and having writs of aſſiſtance from the exchequer, ſhall ſeize luteſtrings or alamodes within the bills of mortality. 5 *An.* *c.* 20. *ſ* 3.)

The ſaid penalties ſhall be two thirds to the king, and one third to him that ſhall ſeize or ſue in any court of record. *ſ.* 9.

Skins. See Leather.

Slander.

I Do not find it any where clearly ſettled, how far ſlander, or ſcandalous words, are cognizable before juſtices of the peace, by reaſon of the different circumſtances in matters of ſo indeterminate a nature; for the ſame words, when ſpoken of different perſons, and even of the ſame perſon with a different emphaſis and manner of delivering them, may receive a very different interpretation.

In general, it ſeemeth that words which directly tend to a breach of the peace, as if one man challenge another, are cognizable before juſtices of the peace, for which the party may be bound to the good behaviour, and even indicted. 2 *Salk.* 698. 1 *Keb.* 931.

But if they do not tend directly to a breach of the king's peace, but are matters only of private ſlander between party and party, which do no way affect the publick adminiſtration of juſtice, as in caſe where the common people are wont to call one another knaves, and rogues, and whores, and thieves; I do not find it aſſerted by any good authority, that juſtices of the peace have any juriſdiction at all in ſuch matters; but the proper remedy ſeems to be in one of theſe two ways, either by a proſecution in the ſpiritual court, or by an action upon the caſe at common law.

In the former caſe, it is provided by the ſtatute of *Circumſpecte agatis*, 13 *Ed.* 1. and alſo by the ſtatute of the 9 *Ed.* 2. *c.* 4. that in matters of defamation, no prohibition ſhall lie to the ſpiritual court from the courts temporal: But Bp. *Gibſon* ſays, that in order to ſecure cauſes of defamation in the ſpiritual court, againſt prohibitions, they muſt have theſe two incidents; 1. That they concern matters merely ſpiritual. 2. That they concern mere ſpiritual matter only, and not mixt with any matter determinable at common law. And the proſecution in this court muſt be only for the puniſhment of ſin, and the welfare of the ſoul; for the party cannot ſue there for amends or damages. *Cod.* 1070.

But the remedy in ſuch caſe (as hath been ſaid) muſt be by action in the courts temporal, if the words will bear it: But it ſeems very difficult, for the reaſons above mentioned, to define what words are actionable, and what not. The moſt general rule ſeems to be, that words are then moſt properly actionable, when they are ſpoken of a perſon in relation to his profeſſion or calling, and not when ſpoken at large without any ſuch particular application.

And by the 21 *J.* *c.* 16. Actions upon the caſe for ſlanderous words, ſhall be brought within two years after the words ſpoken, and not after: and if the jury find the damages under 40 *s.* the plaintiff ſhall have no more coſts than damages.

But if the words ſpoken are not in themſelves actionable, and damages are given to the plaintiff for a conſequential loſs only, there the plaintiff may have larger coſts. And the diſtinction is

 this:

this: The ſtatute expreſsly mentions actions of *ſlander*; but if the words are ſuch, as give the party an action in reſpect of the ſpecial damage reſulting therefrom, and are not in themſelves actionable, it is not properly an action of ſlander, but a ſpecial action on the caſe; and therefore is not within this ſtatute. *E.* 12 *G.* 2. *Baſs* and *Hickford. Andr.* 375.

M. 17 *G.* 2. *Underwood* and *Parks.* In an action for words, the defendant pleaded *not guilty*, and offered to prove the words to be true, in mitigation of damages: But *Lee* Ch J. refuſed to admit the ſame, ſaying, that at a meeting of all the judges upon a caſe that aroſe in the common pleas, a large majority of them had determined, not to allow it for the future, but that it ſhould be *pleaded*, whereby the plaintiff might be prepared to defend himſelf, as well as to prove the ſpeaking of the words. *Str.* 1200.

Finally, there is one ſpecies of ſlander, of which the law takes a more eſpecial notice; and that is, when it relates to the great men of the realm: Concerning whom, it is enacted by the 3 *Ed.* 1. *c.* 34. 2 *R.* 2. *ſt.* 1. *c.* 5. and 12 *R.* 2. *c.* 11. *that none ſhall tell or publiſh any falſe news or tales, whereby diſcord, or occaſion of diſcord or ſlander may grow, between the king and his people, or the great men of the realm; and that none ſhall deviſe, ſpeak, or tell any falſe news or lies, of any prelates, lords, judges, or other great men of the realm, whereof any diſcord or ſlander may ariſe; on pain of impriſonment, until he hath brought into court the firſt author of the tale; and if he cannot find the author, he ſhall be puniſhed by advice of the council.*

Publiſh any falſe news or tales] But this extends only to extrajudicial ſlanders; for if a man charge them in due courſe of law, altho' the charge be falſe, yet there will lie no action *de ſcandalis magnatum*, neither at common law, nor by theſe ſtatutes. 2 *Inſt.* 228.

Smugglers. See Exciſe.
Snares. See Game.
Snuff. See Tobacco.
Sodomy. See Buggery.

Soldiers.

FOR ſoldiers inliſting into foreign ſervice, ſee title Foreign Service.

The ancient military order was, when the king was to be ſerved with ſoldiers for his war, a knight or eſquire of the county, that had revenues, farmers, and tenants, would covenant with the king by indenture inrolled in the exchequer, to ſerve the king for ſuch

ſuch a term with ſo many men ſpecially named in a liſt, in his war. 1 *Inſt.* 71.

And in conſequence hereof, there are many regulations by divers ſtatutes concerning the ſame; which being now out of uſe, it is thought ſufficient juſt to mention them; to wit,

18 *H.* 6. *c.* 19.
7 *H.* 7. *c.* 1.
3 *H.* 8. *c.* 5.
2 & 3 *Ed.* 6. *c.* 2.
4 & 5 *P.* & *M.* *c.* 3.
5 *Ed.* 6. *c.* 5.

But the preſent regulations concerning the ſoldiery (the militia excepted) are chiefly contained in the yearly acts againſt mutiny and deſertion; the ſubſtance whereof is contained in the following ſections.

I. Articles of war.
II. Inliſting ſoldiers.
III. Muſter.
IV. Carriages.
V. Billeting.
VI. To remove in time of elections.
VII. Having wives or children, to be examined as to their ſettlement.
VIII. Deſtroying the game.
IX. Sued for debt.
X. Guilty of crimes.
XI. Pay.
XII. Deſerting.
XIII. Setting up trades after their diſcharge.
XIV. Maintenance after their diſcharge.
XV. Probate of their wills.

I. Articles of war.

The king may form articles of war for better government of the forces, and conſtitute courts martial, with power to try any crime by ſuch articles of war. 28 *G.* 2. *c.* 4. *ſ.* 55.

But no perſon ſhall be adjudged to ſuffer any puniſhment extending to life or limb, by the ſaid articles, except for crimes expreſſed to be ſo puniſhable by this act. *ſ.* 56.

II. Inlisting soldiers.

When any person shall be inlisted, he shall in four days, but not sooner than 24 hours, be carried before the next justice, or chief magistrate of a town corporate (not being an officer in the army), and before him shall be at liberty to declare his dissent to such inlisting; and on such declaration, and returning the inlisting money, and paying 20*s.* for the charges expended on him, he shall be forthwith discharged, in presence of such magistrate: But if he shall not in 24 hours return and pay such money as aforesaid, he shall be deemed to be inlisted, as if he had given his assent thereto before such magistrate. If he declare that he voluntarily inlisted himself, the justice or chief magistrate shall forthwith certify under his hand, that such person is duly inlisted, setting forth the place of his birth, age, and calling (if known), and that the second and sixth sections of the articles of war against mutiny and desertion were read to him, and that he has taken the oath mentioned in the said articles of war: And if any person so certified as duly inlisted shall refuse to take the said oath of fidelity before such magistrate, the officer from whom he hath received such money, may detain and confine him till he shall take it: And every military officer that shall act contrary hereto, or offend herein, shall incur the like penalty as is by this act inflicted for making a false muster, to be recovered as any penalties by this act are recoverable. *s.* 71.

Which said second and sixth sections of the articles of war are these:

(SECT. II.)

Art. 1. Whatsoever officer or soldier shall presume to use traiterous or disrespectful words against the sacred person of his majesty, his royal highness the prince of *Wales*, or any of the royal family; if a commissioned officer, he shall be cashiered; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted upon him by the sentence of a court martial.

Art. 2. Any officer or soldier who shall behave himself with contempt or disrespect towards the general, or other commander in chief of our forces, or shall speak words tending to his hurt or dishonour, shall be punished according to the nature of his offence, by the judgment of a court martial.

Art. 3. Any officer or soldier who shall begin, excite, cause or join in any mutiny or sedition, in the troop, company, or regiment, to which he belongs, or in any other troop or company in our service, or on any party, post, detachment, or guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a court martial shall be inflicted.

Art. 4. Any officer, non-commissioned officer, or soldier, who being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same, or coming to the knowledge of any

any mutiny, or intended mutiny, does not without delay give information thereof to his commanding officer, ſhall be puniſhed by a court martial with death, or otherwiſe, according to the nature of the offence.

Art. 5. Any officer or ſoldier who ſhall ſtrike his ſuperior officer, or draw, or offer to draw, or ſhall lift up any weapon, or offer any violence againſt him, being in the execution of his office, on any pretence whatſoever, or ſhall diſobey any lawful command of his ſuperior officer, ſhall ſuffer death, or ſuch other puniſhment as ſhall, according to the nature of his offce, be inflicted upon him by the ſentence of a court martial.

(SECT. VI.)

Art. 1. All officers and ſoldiers, who having received pay, or having been duly inliſted in our ſervice, ſhall be convicted of having deſerted the ſame, ſhall ſuffer death, or ſuch other puniſhment as by a court martial ſhall be inflicted.

Art. 2. Any non commiſſioned officer or ſoldier, who ſhall, without leave from his commanding officer, abſent himſelf from his troop or company, or from any detachment with which he ſhall be commanded, ſhall, upon being convicted thereof, be puniſhed according to the nature of his offence, at the diſcretion of a court martial.

Art. 3. No non commiſſioned officer or ſoldier ſhall inliſt himſelf in any other regiment, troop, or company, in which he laſt ſerved, on the penalty of being reputed a deſerter, and ſuffering accordingly. And in caſe any officer ſhall knowingly receive and entertain ſuch non-commiſſioned officer or ſoldier, or ſhall not, after his being diſcovered to be a deſerter, immediately confine him, and give notice thereof to the corps in which he laſt ſerved, he the ſaid officer ſo offending ſhall by a court martial be caſhiered.

Art. 4. Whatſoever officer or ſoldier ſhall be convicted of having adviſed or perſuaded any other officer or ſoldier to deſert our ſervice, ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a court martial.

And the *oath* mentioned in the ſaid articles of war, is as follows:

I ſwear to be true to our ſovereign lord king George, *and to ſerve him honeſtly and faithfully, in defence of his perſon, crown, and dignity, againſt all his enemies or oppoſers whatſoever: And to obſerve and obey his majeſty's orders, and the orders of the generals and officers ſet over me by his majeſty.*

And the juſtice's certificate of the whole may be this:

Weſtmorland. I *DO hereby certify, that* A. S. *of the age of* ——— *years, born at* ——— *in the county of* ——— *ſhoemaker, came this day before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county of* ——— *and declared that on the* ——— *day of* ——— *now laſt paſt, he did voluntarily inliſt himſelf as a private ſoldier to ſerve his ſaid majeſty*

king George *the ſecond, in the regiment of foot commanded by* ——— *and that he now freely conſenteth unto the ſame: And thereupon I do hereby alſo certify, that he the ſaid* A. S. *is duly inliſted as aforeſaid; and that the ſecond and ſixth ſections of the articles of war againſt mutiny and deſertion were alſo before me read unto him this day, and that he hath alſo at the ſame time taken before me the oath mentioned in ſaid articles of war. Given under my hand at* ——— *in the ſaid county of* ——— *the* ——— *day of* ———.

But if any perſon ſhall receive the inliſting money, knowing it to be ſuch, and ſhall abſcond, or refuſe to go before ſuch magiſtrate, in order to declare his aſſent or diſſent, he ſhall be deemed to be liſted, and may be proceeded againſt as if he had taken the ſaid oath before ſuch magiſtrate. 28 *G.* 2. *c.* 4. *ſ.* 72.

III. Muſter.

Every commiſſary or muſter maſter, upon any muſter to be made, ſhall give convenient notice thereof to the mayor, or other chief officer, of the place where the ſoldiers are quartered; who ſhall be preſent at every ſuch muſter: And every muſter maſter neglecting to give ſuch notice, or refuſing the aſſiſtance of ſuch mayor or other officer, ſhall forfeit 50 *l.* and his office. And no muſter roll ſhall be allowed, unleſs ſigned by ſuch mayor or other officer: But if ſuch mayor or officer ſhall not attend, or refuſe to ſign ſuch muſter roll, without giving ſufficient reaſon for ſuch his refuſal; then the commiſſary may proceed to muſter, and ſuch muſter roll ſhall be allowed, tho' not ſigned as aforeſaid, provided that oath be made before a juſtice in 48 hours after ſuch muſter; and the ſaid muſter roll ſhall be then produced, and examined by the ſaid juſtice, who ſhall ſign the ſame, if there appear to be no ſufficient objection to it. *ſ.* 15.

And in *Weſtminſter* and *Southwark*, no muſter ſhall be made, but in preſence of two juſtices (not being officers of the army); unleſs the juſtices, on 48 hours notice to ſix of them, refuſe to attend. *ſ.* 36.

And the commiſſary or muſter maſter ſhall make oath (for which no fee ſhall be taken) before the mayor or chief magiſtrate attending the muſter, if ſuch mayor or chief magiſtrate be a juſtice of the peace, or otherwiſe before a juſtice in the form following; I *A. B.* do ſwear, that I ſaw at the time of making the within muſter, ſuch men or horſes as are borne, and not reſpited, on the muſter roll, for which men or horſes a ſigned certificate or certificates are not indorſed on the back of the roll, certifying their being abſent from the muſter, by reaſon of being employed on ſome other duty of the regiment, or by being ſick, in priſon, or furlough, or at graſs, or by a ſigned leave from the colonel or field officer, or officer commanding the regiment, troop, or company:

Which oath the ſaid commiſſary ſhall inſert and ſubſcribe on the back of the muſter roll tranſmitted by him into the office of the commiſſary general of the muſters. *ſ.* 18.

And

And if any perſon ſhall give a falſe certificate, to excuſe any ſoldier from muſter or other ſervice, on pretence of being employed on ſome other duty of the regiment, or of ſickneſs, being in priſon, or on furlough; he ſhall forfeit 50 *l.* and be caſhiered and diſabled to hold any military office. And no certificate ſhall excuſe the abſence of any ſoldier, but for the reaſons abovementioned, or one of them; and the commiſſary ſhall ſet down on the roll, at the time of taking the muſter, the reaſon of ſuch abſence, and by whom certified; and not to ſet down any ſuch excuſe, without view of ſuch certificate. *ſ.* 12.

And every officer that ſhall make any falſe muſter of man or horſe, and every commiſſary, muſter maſter, or other officer, who ſhall wittingly allow or ſign the muſter roll, wherein any ſuch falſe muſter is contained, or ſhall take any reward for muſtering or ſigning muſter rolls, ſhall be caſhiered and diſabled. *ſ.* 13.

And if any perſon ſhall be falſly muſtered, or offer himſelf to be falſely muſtered; on proof thereof by oath of two witneſſes, before the next juſtice, and on certificate thereof under the hand of the commiſſary, or chief magiſtrate as aforeſaid, he ſhall be committed to the houſe of correction for ten days: And if any perſon ſhall wittingly furniſh a horſe to be muſtered, he ſhall be forfeited to the informer, if he ſhall belong to the perſon furniſhing the ſame; otherwiſe the offender ſhall forfeit to the informer 20 *l.* on oath by two witneſſes, before the next juſtice, by diſtreſs; and if he ſhall have no ſufficient diſtreſs, or ſhall not pay in four days after conviction, he ſhall be committed to the common gaol for three months, or be publickly whipped at the diſcretion of the juſtice; and the informer, if a ſoldier, ſhall be diſcharged, if he demands it. *ſ.* 16.

But fictitious names, allowed by his majeſty's order upon the muſter rolls, for the maintenance of widows of officers who loſt their lives in the late war, or during the late rebellion, ſhall not be conſtrued a falſe muſter. *ſ.* 14.

IV. Carriages.

For proviſion of carriages for the forces in their march, or for their arms, cloaths, and accoutrements, any juſtice of the peace, being duly required thereunto, by an order from his majeſty, or the general of his forces, or the maſter general, or lieutenant general of his majeſty's ordnance, ſhall on ſuch order being brought and ſhewn unto him, by the quartermaſter, adjutant, or other officer of the regiment, troop, or company ordered to march, iſſue out his warrant to the conſtables or petty conſtables of the diviſion, liberty, hundred, or precinct from, through, near, or to which ſuch forces ſhall be ordered to march; requiring them to make ſuch proviſion for carriages, with able men to drive the ſame, as is mentioned in the ſaid warrant; allowing them ſufficient time to do the ſame, that the neighbouring parts may not always bear the burden: And if ſufficient carriages cannot be provided within any ſuch liberty, diviſion, or precinct; then the next juſtice (or juſtices) of the county, riding, or diviſion;

ſion, ſhall on ſuch order as aforeſaid ſo brought or ſhewn to him, iſſue his warrant to the conſtables or petty conſtables of ſuch next county, riding, diviſion, or precinct, for the purpoſes aforeſaid, to make up ſuch deficiency. *ſ.* 42.

Which warrant may be thus:

Weſtmorland. { To the conſtable of ———

By virtue of an order from ——— general of his majeſty's forces, this day brought and ſhewn unto me ——— one of his majeſty's juſtices of the peace for the ſaid county, by ——— lieutenant in captain ———'s company of his majeſty's regiment of foot, commanded by ——— you are hereby required to provide ——— ſufficient carriages, with able men to drive the ſame, within your conſtablewick, whereby to remove the arms, cloaths, and accoutrements of the ſaid company on their march from Shap *to* Kirkby *in* Kendale *in the ſaid county; and with them you are to appear at* Shap *aforeſaid to morrow preciſely at five of the clock in the morning. Herein fail you not, as you will anſwer the contrary at your peril. Given under my hand and ſeal at ——— in the ſaid county, the ——— day of ——— in the ——— year ———*

And the officer, who by virtue of the ſaid warrant, is to demand the carriages of the conſtable to whom it is directed, ſhall at the ſame time pay down to him in hand for the uſe of the perſons who ſhall provide ſuch carriages and men, the ſum of 1 *s.* for every mile any waggon with five horſes ſhall travel; and 1 *s.* for every mile any wain with ſix oxen, or four oxen with two horſes ſhall travel; and 9 *d.* for every mile any cart with four horſes ſhall travel; and ſo in proportion for leſs carriages: For which the conſtable ſhall give a receipt. *ſ.* 42.

And ſuch conſtable, or petty conſtable, ſhall appoint ſuch perſons having carriages within their reſpective liberties, as they ſhall think proper, to provide and furniſh ſuch carriages and men. *id.*

And if any military officer ſhall force any carriage to travel more than one day's journey; or ſhall not diſcharge the ſame in due time for their return home; or ſhall ſuffer any ſoldier or ſervant (except ſuch as are ſick), or any woman, to ride on ſuch carriage; or ſhall force any conſtable, by threatnings, to provide ſaddle horſes for themſelves or ſervants; or ſhall force horſes from the owners, by themſelves, ſervants, or ſoldiers; he ſhall forfeit 5 *l.* proof thereof being made on oath before two juſtices, who ſhall certify the ſame to the paymaſter general, or other paymaſter of the forces, who ſhall pay the ſame, according to the order of the ſaid juſtices under their hands and ſeals, who ſhall deduct the ſame out of the officer's pay. *id.*

And no waggon, wain, cart, or carriage, ſhall be obliged to carry above twenty hundred weight. *ſ.* 46.

And if any high or petty conſtable ſhall wilfully neglect or refuſe to execute ſuch warrants for providing carriages; or if any

perſon

perſon appointed by ſuch conſtable to furniſh any carriage and man, ſhall refuſe or neglect to provide the ſame; or any other perſon ſhall wilfully hinder the execution thereof, he ſhall forfeit not exceeding 40 *s.* nor leſs than 20 *s.* to the poor of the pariſh where ſuch offence ſhall be committed; the ſame to be heard and determined by two juſtices dwelling in or near the place, who ſhall cauſe the penalty to be levied by diſtreſs. *ſ.* 43.

And whereas the ſums to be paid to the conſtables by the officers demanding carriages, are in many caſes not ſufficient to anſwer the charge and expence of providing the ſame to the great burden of the townſhip, or elſe the perſons performing ſuch carriages are grievouſly oppreſſed; it is enacted, that the treaſurer of the county ſhall without fee pay unto ſuch conſtable all reaſonable ſums by him laid out for carriages, over and above what was or ought to have been paid by the officer requiring ſuch carriages, out of the publick ſtock, according to ſuch rates and orders as the juſtices in ſeſſions ſhall direct, which orders ſhall be made without fee; regard being had to the ſeaſon of the year, and the length and condition of the ways: and if the publick ſtock be not ſufficient, the juſtices in ſeſſions may raiſe money as for gaols and bridges. *ſ.* 44, 45.

That is to ſay, the ſame ſhall be paid out of the general county rate, as directed by the 12 *G.* 2. *c.* 29.

H. 3 *G. K.* againſt *Hunt* and others. The court granted a *mandamus* directed to the juſtices of the peace, to allow the defendants, being conſtables, the extraordinary charges in providing carriages on the late expedition into *Scotland*. *Str.* 42, 93.

V. Billeting.

By the 31 *C.* 2. *c.* 1. No officer, military or civil, nor any other perſon whatſoever, ſhall preſume to place, quarter, or billet any ſoldier, on any ſubject or inhabitant of this realm, of any degree, quality, or profeſſion whatſoever, without his conſent; and every ſuch ſubject or inhabitant may refuſe to ſojourn or quarter any ſoldier, notwithſtanding any command, order, warrant, or billeting whatever. *ſ.* 54.

But by the mutiny act, The conſtables and other chief officers and magiſtrates of cities, towns, villages, and other places, and in their default or abſence, any one juſtice inhabiting in or near ſuch place, and no others, ſhall and may quarter and billet the officers and ſoldiers in inns, livery ſtables, alehouſes, victualling houſes, and all houſes of perſons ſelling brandy, ſtrong waters, cyder, or metheglin, by retail, to be drank in houſes (other than the houſes of diſtillers and of ſhopkeepers, whoſe principal dealings ſhall be more in other goods than in brandy or ſtrong waters, and who do not permit tippling in their houſes) and no other, and in no private houſes whatſoever; nor ſhall any more billets be ordered, than there are effective ſoldiers; and if any conſtable, or ſuch like officer, or magiſtrate as aforeſaid, ſhall preſume to quarter or billet any ſuch officer or ſoldier in any private houſe, without the conſent of the owner or occupier, ſuch owner or occupier

occupier ſhall have his remedy at law againſt ſuch magiſtrate or officer for damages; and if any military officer ſhall take upon him to quarter ſoldiers otherwiſe than by this act, or ſhall offer any menace or compulſion, to any mayor, conſtable, or other civil officer before mentioned, tending to deter and diſcourage any of them from doing their duty, he ſhall on conviction before any two of the next juſtices, by the oath of two witneſſes, be *ipſo facto* caſhiered and diſabled to hold any military employment; provided the conviction be affirmed at the next ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. And if any perſon ſhall be aggrieved by having more ſoldiers billeted than in proportion to his neighbours, on complaint thereof to one juſtice, or if the perſon ſo billeting them be a juſtice, then on complaint to two juſtices, they may relieve him. *ſ.* 24.

Note; the clauſe above recited, relating to ſhopkeepers, might as well be now omitted out of the act; for that by the 17 *G.* 2. *c.* 17. no ſhopkeepers, as ſuch, are allowed to retail any ſpirituous liquors, but only thoſe who keep taverns, victualling houſes, inns, coffee houſes, or alehouſes.

But no juſtice, having any military command, ſhall be concerned in quartering ſoldiers under his immediate command; but all things done by him therein ſhall be void. 28 *G.* 2. *c.* 4. *ſ.* 25.

And if any conſtable, or other officer, ſhall neglect his duty in billeting, for the ſpace of two hours, provided ſufficient notice hath been given before, of the arrival of the forces; or ſhall take any reward to excuſe any perſon; or if any perſon liable ſhall refuſe to receive any ſoldiers, or to furniſh them as required by this act; and be thereof convicted, before one juſtice, by confeſſion or oath of one witneſs, he ſhall forfeit 5 *l.* (or any ſum not exceeding 5 *l.* nor leſs than 40 *s.*) by diſtreſs, by warrant of ſuch juſtice, to be directed to any other conſtable, or to any overſeer of the poor of the ſaid place. *ſ.* 68.

And if any officer ſhall take any money of any perſon, for excuſing the quartering of ſoldiers, he ſhall be caſhiered and incapacitated. *ſ.* 28.

And if any officer, military or civil, ſhall quarter any of the wives, children, men, or maid ſervants of officer or ſoldier, in any houſe againſt the conſent of the owner; if he is an officer of the army, he ſhall on proof made thereof to the commander in chief of the army, or judge advocate, be *ipſo facto* caſhiered; and if a conſtable, or other civil officer, he ſhall forfeit to the party grieved 20 *s.* on proof thereof to the next juſtice, by diſtreſs. *ſ.* 48.

Officers and ſoldiers, billeted as aforeſaid, ſhall be received and furniſhed with diet and ſmall beer, paying for the ſame as hereafter is mentioned, out of their ſubſiſtence money. *ſ.* 26.

But if any perſon ſhall chuſe rather to furniſh them with candles, vinegar, and ſalt, and with either ſmall beer or cyder, not exceeding five pints a day, *gratis*, and allow them the uſe of fire, and the neceſſary utenſils for dreſſing and eating their meat,

and

and ſhall give notice thereof to the commanding officer, and ſhall furniſh the ſame accordingly; in ſuch caſe, they ſhall provide their own victuals, and the officers ſhall pay the ſums out of the ſubſiſtence money for diet and ſmall beer to ſuch ſoldiers, and not to the perſons on whom they are quartered; except on a march, or recruiting. *ſ.* 27.

In all places where horſe or dragoons ſhall be quartered, the men and their horſes ſhall be billeted in one and the ſame houſe (except in caſe of neceſſity); and in no caſe there ſhall be leſs than one man billeted, where there ſhall be one or two horſes, nor leſs than two men where there ſhall be four horſes, and ſo in proportion. *ſ.* 29.

Officers may remove or exchange men or horſes, with others quartered in the ſame town; provided the numbers ſo exchanged are equal: and the conſtables, or other officers, ſhall billet them accordingly. *ſ.* 30.

Any juſtice by his warrant, may command any conſtable or other officer, to give an account in writing of the number of officers and ſoldiers billeted by them, and alſo of the names of the perſons on whom they are billeted, with the ſtreet or place where they dwell, and the ſigns, if any; that it may appear where they are quartered, the better to prevent abuſes in billeting of them. *ſ.* 69.

In *Weſtminſter* and *Southwark*, the petty conſtables ſhall deliver liſts on oath at every quarter ſeſſions, of the houſes and perſons obliged to receive ſoldiers quartered, and the number billeted in each houſe; the liſts to remain with the clerk of the peace, to be inſpected without fee; and the clerk ſhall deliver copies at 2 *d.* a ſheet containing 150 words: conſtables making default ſhall forfeit 5 *l.* to the poor by diſtreſs, by warrant of one juſtice; for want of diſtreſs, to be impriſoned not more than three months, nor leſs than one. *ſ.* 39.

VI. To remove in time of elections.

On notice from the clerk of the crown, to the ſecretary at war, of any writ made out for the election of a member to ſerve in parliament, he ſhall ſend orders for removing ſoldiers two miles or more from the place of election, at leaſt one day before the election, and continue at leaſt one day after the poll taken: But this not to extend to *Weſtminſter*, or other place of reſidence of the royal family, or fortified places, or any officer or ſoldier having a right to vote at ſuch election. 8 *G.* 2. *c.* 30.

VII. Having wives or children, to be examined as to their ſettlement.

If any non commiſſion officer or ſoldier ſhall have wife, child, or children; two juſtices may ſummon him, where he is quartered, to make oath of the place of his laſt legal ſettlement; who ſhall obey ſuch ſummons, and make oath accordingly: And the juſtices ſhall give an atteſted copy of ſuch affidavit, to be deli-

vered to the commanding officer, to be produced when required. And being ſummoned again, he ſhall not take another oath with regard to his ſettlement, but ſhall leave a copy of the former. 28 *G.* 2. *c.* 4. *ſ.* 31.

VIII. Deſtroying the game.

If any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, take or kill any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 *l.* to the poor; and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20 *s.* to be paid and diſtributed in manner aforeſaid. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion. *ſ.* 49.

IX. Sued for debt.

No volunteer ſhall be taken out of the ſervice, by any proceſs, other than for ſome criminal matter, unleſs for a real debt, or other juſt cauſe of action, and unleſs affidavit be made before a judge of the court, that the original ſum due amounts to 10 *l.* a memorandum of which oath ſhall be indorſed on the proceſs; and if he ſhall be otherwiſe arreſted, the judge may diſcharge him, and award coſts. *ſ.* 66.

But the plaintiff, on notice given in writing of the cauſe of action to ſuch perſon, or left at his laſt place of reſidence before liſting, may file a common appearance, in an action to be brought for any debt, ſo as to intitle him to proceed therein to judgment and outlawry, and to execution, other than againſt his body. *ſ.* 67.

X. Guilty of crimes.

The king may appoint courts martial, for trial of the offences of ſoldiers, by the articles of war. *ſ.* 55.

And every officer and ſoldier who ſhall begin, excite, cauſe, or join in any mutiny or ſedition, or ſhall not uſe his utmoſt endeavours to ſuppreſs the ſame, or ſhall not give immediate notice thereof to his commanding officer, or ſhall deſert, or liſt in any other regiment, or ſhall be found ſleeping on his poſt, or ſhall leave it before relieved, or ſhall hold correſpondence with the enemy, or ſtrike or uſe any violence againſt his ſuperior officer in the execution of his office, or ſhall diſobey his lawful commands, ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall inflict. *ſ.* 1.

But the trial of offences by a court martial, ſhall not exempt them from the ordinary proceſs of law. *ſ.* 11.

And if any officer or ſoldier ſhall be accuſed of any capital crime, or of any violence or offence againſt the perſon, eſtate, or property of any the king's ſubjects, the commanding officer ſhall uſe his utmoſt endeavour to deliver over ſuch accuſed perſon to the civil magiſtrate; and ſhall alſo be aiding to the officers of juſtice, in ſeizing and apprehending him, in order to bring him to trial; on pain, on conviction before two juſtices, by the oaths of two witneſſes, of being *ipſo facto* caſhiered and diſabled; provided the conviction be affirmed at the next ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. *ſ.* 60.

But no perſon acquitted or convicted of capital offences by the civil magiſtrate, ſhall be puniſhed for the ſame by a court martial, otherwiſe than by caſhiering. *ſ.* 59.

By the 19 *G.* 2. *c.* 21. Soldiers convicted of profane curſing or ſwearing, and not paying the penalty, ſhall not be committed to the houſe of correction as other offenders, but ſhall be put in the ſtocks for one hour, for every ſingle offence; and for any number of offences, of which they ſhall be convicted at one and the ſame time, two hours.

XI. Pay.

The officer who ſhall receive the pay or ſubſiſtence money, ſhall immediately upon receipt thereof, give publick notice to all perſons keeping inns or other places where ſoldiers are quartered, to repair to their quarters, at ſuch time as they ſhall appoint for diſtribution thereof to the officers and ſoldiers, which ſhall be within four days after receipt thereof: And the ſaid innkeepers and others ſhall be firſt paid, before any part of the pay be diſtributed to the officers or ſoldiers; provided the accounts exceed not for a commiſſion officer of horſe under the degree of a captain, for diet and ſmall beer 2 *s.* a day; nor for a commiſſion officer of dragoons under the degree of a captain 1 *s.* nor for a commiſſion officer of foot under the degree of a captain 1 *s.* and for each horſe 6 *d.* nor for one light horſman's diet and hay and ſtraw for his horſe 1 *s.* nor for one dragoon's diet and hay and ſtraw for his horſe 1 *s.* nor for one foot ſoldier's diet 4 *d.* And if any officer ſhall not give ſuch notice, and ſhall not immediately on producing ſuch account pay the ſame, on complaint and oath made thereof by two witneſſes at the next ſeſſions, the paymaſter (on certificate of the juſtices in ſuch ſeſſions of the ſum due, and to whom the ſame is owing) ſhall pay the ſame out of the ſaid officer's arrears, on pain of forfeiting his office, and diſability; and if no ſuch arrears be due, the paymaſter ſhall deduct the ſums to be paid, purſuant to the juſtices certificate, out of the next pay of the regiment; and ſuch officer ſhall for ſuch his offence, or for neglecting to give ſuch notice, be *ipſo facto* caſhiered. And where it ſhall happen, that the ſubſiſtence money due to any officer or ſoldier, ſhall by any accident not be paid, or ſuch officer or ſoldier ſhall neglect to pay the ſame; or where any forces ſhall be upon their march, ſo that no ſubſiſtence can be remitted to them, or they

ſhall neglect to pay the ſame; every ſuch officer ſhall, before his departure out of his quarters, make up the accounts with every perſon with whom ſuch ſoldiers ſhall have quartered, and ſign a certificate thereof, and give the ſame to the party to whom ſuch money is due, with the name of the regiment, troop, or company to which he ſhall belong, that the ſame may be tranſmitted to the paymaſter, who ſhall immediately pay the ſame, under pain as is before directed for non-payment of quarters. *ſ.* 35.

XII. Deſerting.

The conſtable may take up any perſon reaſonably ſuſpected to be a deſerter, and carry him before a juſtice in or near the place, who ſhall examine ſuch ſuſpected perſon; and if by his confeſſion, or the oath of one witneſs, or the knowledge of ſuch juſtice, he ſhall be found to be a deſerter, the juſtice ſhall forthwith cauſe him to be conveyed to the county gaol, or houſe of correction (or the *Savoy* in *London*) and tranſmit an account thereof to the ſecretary at war; and the keeper of ſuch gaol or houſe of correction ſhall receive the ſubſiſtence of ſuch deſerter, for his maintenance while he ſhall be in cuſtody, but ſhall not be intitled to any fee for his impriſonment. *ſ.* 51.

But no officer may break open any houſe to ſearch for deſerters, without a juſtice's warrant; on pain of 20 *l.* *ſ* 54.

And the juſtice, before whom he is brought, ſhall iſſue his warrant to the collector of the land tax, of the pariſh or townſhip where ſuch deſerter ſhall be apprehended, for paying out of the land tax money by him collected or to be collected, to the hands of him who ſhall apprehend, or cauſe to be apprehended, ſuch deſerter, the ſum of 20 *s.* the ſame to be allowed on his account. *ſ.* 52.

And if any perſon ſhall knowingly harbour or aſſiſt any deſerter, he ſhall forfeit 5 *l.* and if any perſon ſhall knowingly buy or exchange or otherwiſe receive any arms, cloaths, or furniture, belonging to the king, from any ſoldier or deſerter, or change the colour thereof, he ſhall forfeit 5 *l.* and on conviction by the oath of one witneſs, before one juſtice, the ſaid penalties ſhall be levied by diſtreſs; half the firſt penalty to be to the informer, by whoſe means ſuch deſerter ſhall be apprehended; and half the laſt penalty, to the informer; and half of both, to the officer to whom the deſerter did belong: and if ſuch perſon have not ſufficient, or ſhall not pay the penalty in four days, the juſtice ſhall commit him to gaol for three months, or cauſe him to be publickly whipped. *ſ.* 53.

And by the 1 *G. ſt.* 2. *c.* 47. If any perſon (other than inliſted ſoldiers againſt whom ſufficient remedy is already provided) ſhall perſuade any ſoldier to deſert, he ſhall on conviction in ſix months forfeit 40 *l.* to the king, or to any other who ſhall ſue for the ſame in any court at *Weſtminſter*; and if he ſhall not have goods worth 40 *l.* or from the circumſtances of the crime it ſhall be thought proper, the court may award the offender to priſon not exceeding ſix months, and to ſtand in the pillory one hour.

XIII. Setting

XIII. Setting up trades after their discharge.

All officers, mariners, and soldiers who have been employed in his majesty's service, and not deserted, may set up and exercise such trades as they are apt for, in any town or place within *Great Britain* or *Ireland*; and if they shall be sued thereupon, they shall have double costs. 22 *G.* 2. *c.* 44.

XIV. Maintenance after their discharge.

By the 43 *El. c.* 3. Every parish shall be charged with a weekly sum, towards the relief of sick, hurt, and maimed soldiers and mariners, as the justices in sessions shall appoint; so as no parish be rated above 10 *d.* nor under 2 *d.* weekly; and so as the total sum in any county where there shall be above 50 parishes, do not exceed 6 *d.* for every parish.

But as this is left to the discretion of the justices, this is not usually done; but they are left to be provided for by the particular parishes whereunto they do belong, or to the provisions of the royal hospitals of *Greenwich* or *Chelsea* respectively.

With regard to the out-pensioners of *Chelsea* hospital, it is required by the statute of the 28 *G.* 2. *c.* 1. that the justices of the peace shall take affidavits of their being alive (or of the time of their deaths respectively) half-yearly, without fee. *s.* 2.

XV. Probate of their wills.

The probate of the will, or letters of administration of any common soldier or seaman, who shall be slain or die in the service, shall be exempted from the stamp duties, a certificate being produced from the captain under whom he served at the time of his death, and oath made of the truth thereof, before the proper judge or officer, for which oath no fee shall be taken. 5 *W.* *c.* 21. *s.* 6.

Note, there is an act of the 28 *G.* 2. *c.* 11. for one year, of somewhat the like import with the annual acts against mutiny and desertion, for the regulation of the marine forces whilst on shore under the direction of the admiralty.

Soap. See Excise.
Spirituous liquors. See Excise.
Squibs. See Fireworks.
Stabbing. See Homicide.

Stamps.

Statutes.

1. THE ſtatutes relating to theſe duties are

5 *W.* *c.* 21.	10 *An.* *c.* 26.
6 & 7 *W.* *c.* 12.	12 *An.* *ſt.* 1. *c.* 2.
9 & 10 *W.* *c.* 25.	12 *An.* *ſt.* 2. *c.* 9.
9 & 10 *W.* *c.* 44.	5 *G.* *c.* 19.
1 *An.* *ſt.* 2. *c.* 22.	6 *G.* *c.* 21.
8 *An.* *c.* 9.	11 *G.* *c.* 8.
9 *An.* *c.* 23.	16 *G.* 2. *c.* 26.
10 *An.* *c.* 19.	

Power of the juſtices in regard to theſe duties.

2. In one of which ſtatutes (*viz.* 10 *An.* *c.* 19.) there is a clauſe which brings all the reſt within the juriſdiction of the juſtices of the peace, and almoſt the whole law relating to this title; and is as follows:

Two juſtices of the peace reſiding near the place, where any pecuniary forfeitures not exceeding twenty pounds on any act touching any the duties under the management of the commiſſioners of the duties on ſtamped vellum, parchment, and paper, ſhall be incurred, or any offence againſt any of the ſame acts ſhall be committed in any wiſe relating to the ſame duties, by which any ſum of money only may be forfeited, may hear and determine the ſame; who ſhall on information or complaint, within a year after ſeizure made or offence committed, ſummon the party accuſed, and witneſſes; and may iſſue warrants for levying the penalties by diſtreſs and ſale, if not redeemed in ſix days. 10 *An.* *c.* 19. *ſ.* 172.

And the ſaid juſtices where they ſee cauſe, may mitigate the penalties; the charges being firſt allowed: and ſo as they reduce not the penalty to leſs than double duty, over and above the ſaid charges. *ſ.* 173.

And no *certiorari* ſhall ſuperſede the proceedings of the ſaid juſtices. *ſ.* 174.

And it is generally provided by the ſeveral acts, that the ſaid forfeitures ſhall be diſtributed, half to the king, and half to him that ſhall ſue.

Stamps to be ſeveral and diſtinct.

3. Before we come to obſerve what theſe duties are, it is proper to premiſe alſo another clauſe, in the act of the 9 & 10 *W.* *c.* 25. to wit, that ſince the duties on the ſeveral ſtamp acts are appropriated to different purpoſes, therefore to diſtinguiſh ſuch paper or parchment which is doubly charged from that which is ſingly charged, there ſhall be two diſtinct ſtamps on the doubly charged. And ſo likewiſe by the ſubſequent ſtatutes, where the paper is trebly charged, there ſhall be three diſtinct ſtamps and not one ſtamp for the whole. So that in this caſe, a double ſix penny ſtamp, and a twelve penny ſtamp, are not the ſame.

4. The

4. The said duties, when brought together from the several acts, seem to be as followeth; The several stamp duties.

	By 5 *W.* c. 21.	By 9 & 10 *W.* c. 25.	By 12 *A.* st. 2. c. 9.
(1) For every skin and piece of vellum or parchment, or sheet of paper, on which shall be written any grant, or letters patents under the great seal, or the seal of the dutchy of *Lancaster*, or of any honour, dignity, promotion, franchise, liberty or privilege, or exemplifications of the same (commissions of rebellion in process, and charity briefs excepted) shall be paid	40*s.*	40*s.*	40*s.*
(2) Grant from the king of any sum above 100*l.* which shall pass the great seal, or privy seal	40*s.*	40*s.*	40*s.*
(3) Grant of any office above 50*l.* a year	40*s.*	40*s.*	40*s.*
(4) Pardon of any crime or forfeiture, warrant of reprieve or relaxation from any fine, corporal punishment, or other forfeiture (general circuit or *Newgate* pardon excepted)	40*s.*	40*s.*	40*s.*
(5) Dispensation to hold two livings, or any dispensation or faculty from the archbishop of *Canterbury*, or master of the faculties	40*s.*	40*s.*	40*s.*
(6) Admittance of a fellow of the college of physicians, or of any attorney, clerk, advocate, proctor, notary, or other officer in any court whatsoever (except annual officers in corporations or inferior courts, whose office is under 10*l.* a year, in salaries, fees, or other perquisites)	40*s.*	40*s.*	40*s.*
(7) Appeal from the court of admiralty, arches, or the prerogative courts	40*s.*	40*s.*	40*s.*
(8) Grant of lands in fee, lease for years, or other grant or profit (not herein particularly charged) under the great seal, or privy seal, or seal of the exchequer or dutchy of *Lancaster*	40*s.*	40*s.*	
(9) Presentation or donation under the great seal, collation, or any presentation or donation by any patron to any spiritual promotion of 10*l.* a year in the king's books	40*s.*	40*s.*	
(10) Letters patents for charity briefs	40*s.*		
(11) General circuit or *Newgate* pardon	40*s.*		
(12) Register, entry, testimonial, certificate of a degree in the universities or inns of court (except the register or entry of a bachelor of arts)	40*s.*		
(13) Institution, or licence, that shall pass the seal of any bishop, chancellor, or other ordinary, or any ecclesiastical court (except licences to schoolmasters and tutors)	5*s.*	5*s.*	5*s.*

	5 *W.* c. 21.	9 & 10 *W.* c. 25.	12 *A.* ſt. 2. c. 9.
(14) Letters of mart	5 *s.*	5 *s.*	5 *s.*
(15) Exemplification that ſhall paſs the ſeal of any court	5 *s.*	5 *s.*	
(16) Licence to ſchoolmaſters and tutors	5 *s.*	5 *s.*	
(17) Writ of error, *certiorari*, or appeal (except to the delegates)	5 *s.*	5 *s.*	
(18) *Significavit pro corporis deliberatione*	5 *s.*	5 *s.*	
(19) Sentence in the admiral's court, or cinque ports, or any attachment out of the ſaid courts, or relaxation of the attachment	5 *s.*	5 *s.*	
(20) Probate of a will, or letters of adminiſtration for any eſtate above 20 *l.* value (except of common ſeamen or ſoldiers ſlain or dead in the ſervice)	5 *s.*	5 *s.*	
(21) Recognizance, ſtatute ſtaple, or ſtatute merchant	5 *s.*	5 *s.*	
(22) Conveyance, ſurrender of grants or offices, releaſe, or other deed inrolled of record in any court at *Weſtminſter*, or any court of record, or by any *cuſtos rotulorum*, or clerk of the peace	5 *s.*	5 *s.*	
(23) Writ of covenant for levying of fines	5 *s.*		
(24) Writ of entry for ſuffering a common recovery	5 *s.*		
(25) Licence for, or certificate of marriage (except the certificate of the marriage of a ſeaman's widow)	5 *s.*		
(26) Writ of *habeas corpus*	5 *s.*		
(27) Beneficial warrant or order under the king's ſign manual (except for the navy, army, and ordnance)	2*s.*6*d.*	2*s.*6*d.*	2*s.*6*d.*
(28) Record of *Niſi Prius* or *Poſtea*	2*s.*6*d.*	2*s.*6*d.*	
(29) Judgment ſigned by the maſter of any office, or his deputy or ſecondary, or by any prothonotary, or his ſecondary, deputy, or clerk, or other officer in the courts at *Weſtminſter*	2*s.*6*d.*	2*s.*6*d.*	
(30) Commiſſion iſſuing out of an eccleſiaſtical court, not otherwiſe particularly charged	2*s.*6*d.*	2*s.*6*d.*	
(31) Warrant, monition, or perſonal decree in any court of admiralty or the cinque ports	2*s.*6*d.*	2*s.*6*d.*	
(32) Transfer of ſtock in any company (over and above the duty of 2 *s.* 3 *d.* by the 10 *An.* c. 19. and other duties)			4*s.*6*d.*
(33) Special bail in any court, and appearance thereon	1 *s.*	1 *s.*	

(34) Bill,

	5 *W.* c. 21.	9 & 10 *W.* c. 25.	12 *A.* st. 2. c. 9.
(34) Bill, answer, replication, rejoinder, interrogatories, depositions taken by commission, or pleadings in any court of equity ——	1 *s.*	1 *s.*	
(35) Admission into any corporation or company, matriculation in the universities, admission into the inns of court ————	1 *s.*	1 *s.*	
(36) Indenture (except for parish apprentices) lease, or deed poll, not otherwise charged;			
Charter party, policy of assurance, passport, bond, release, contract, or other obligatory instrument, protest, procuration, letter of attorney, or any other notarial act ——	6 *d.*		
Indenture (except for parish apprentices) lease or deed poll, not otherwise charged;			
Charter party, policy of assurance, passport, bond, release, contract, or other obligatory instrument, protest, procuration, letter of attorney, or any other notarial act —		6 *d.*	
Indenture, lease, bond, or any deed not otherwise charged (except bail bonds and assignments thereof, and except indentures of parish apprentices) ——— ———			6 *d.*
Note; The above treble six penny instruments, being expressed with some confusion, because the same words which are in the 5 *W.* and 9 & 10 *W.* are not repeated in the 12 *An.* it is thought necessary to insert them as they stand in the several acts.			
(Moreover, by the 10 *An.* c. 26. for a policy of assurance, if it be within the bills of mortality, there shall be further paid 2 *s.* 4 *d.*)			
(37) Decree or dismission in chancery, or other court of equity ——— ———	6 *d.*	6 *d.*	
(38) Affidavit (except for burying in woollen, and except before officers of the customs, or justices of the peace, and commissioners for levying any aids or duties) ——— ———	6 *d.*	6 *d.*	
(39) Copy of such affidavit to be read or filed in any court ——— ——— ———	6 *d.*	6 *d.*	
(40) Original writ (except on which a *capias* issues) *subpœna*, bill of *Middlesex*, *latitat*, writ of *capias*, *quo minus*, *dedimus potestatem*, to take answers, examine witnesses, or appoint guardians, and any other writ, process, or mandate issuing out of any court holding plea, where the debt or damage amounts to 40 *s.* (except writs of covenant for levying of fines, writs of entry for common recoveries, and writs of *habeas corpus*)	6 *d.*	6 *d.*	

(41) Entry

(41) Entry of an action in the courts of corporations, and other courts, out of which no writ, process, or mandate issues, holding plea, where the debt or damage amounts to 40 *s.* —— —— ——	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *st.* 2. *c.* 9.
	6 *d.*	6 *d.*	
(42) Common bail in any court, and appearance thereon —— ——	6 *d.*	6 *d.*	
(43) Rule or order in any court at *Westminster* —— —— ——	6 *d.*	6 *d.*	
(44) Copy of such rule or order, or of any other record or proceedings in the said courts, not otherwise charged ——	6 *d.*	6 *d.*	
(45) Citation or monition in an ecclesiastical court, libel, allegation, deposition, answer, sentence, or final decree, inventory, or any copies of them —— ——	6 *d.*	6 *d.*	
(46) Indenture of parish apprentices —	6 *d.*		
(47) Declaration, plea, replication, rejoinder, demurrer, or other pleadings in any court of law —— —— —	1 *d.*	1 *d.*	
(48) Copy thereof —— ——	1 *d.*	1 *d.*	
(49) Depositions in chancery, or other court of equity (except the paper draughts of depositions taken by commissions before they are ingrossed) not before charged; copy of any bill, answer, plea, demurrer, replication, rejoinder, interrogatories, depositions, or other proceedings in any court of equity —	1 *d.*	1 *d.*	
(50) Copy of a will —— ——	1 *d.*	1 *d.*	

(Furthermore, besides the duties imposed by the three acts abovementioned, there are other duties by several other acts, as follows:)

(51) For every certificate or debenture for any drawback of customs, 8 *d.* by 9 *An.* *c.* 23.

(52) Bill of lading signed for goods to be exported, 4 *d.* by 9 *An.* *c.* 23.

(53) Wine licence, 4 *s.* by 9 *An.* *c.* 23.

(54) Licence for retailing beer, ale, or other excisable liquors, 1 *s.* by 9 *An.* *c.* 23.

(55) Surrender of, or admittance to a copyhold, or any grant or lease by copy of court roll, or any other copy of the court roll of any honour or manor (except the original surrender to the use of a will, and the court roll or book wherein the proceedings of the court are entred), 2 *s.* 3 *d.* by 10 *An.* *c.* 19.

But this shall not charge any copy of a surrender or admittance to a custom right or tenant right estate, not being copyhold. 12 *An.* *st.* 1. *c.* 2. *s.* 49.

(56) By the 8 *An.* *c.* 9. Over and above the stamp duties upon the indenture, there shall be paid by the master, 6 *d.* for every 20 *s.* of every sum of 50 *l.* or under; and the duty of 1 *s.* for every 20 *s.* of every sum above 50 *l.* which shall be given or con-

contracted for, in relation to any clerk, apprentice, or servant (except parish apprentices), and proportionably for greater or lesser sums.

5. But none of these acts shall charge any bills of exchange, accounts, bills of parcels, bills of fees, or any bills or notes (not sealed) for payment of money at sight, or on demand, or at the end of certain days of payment. 5 *W. c.* 21. *s.* 5. Writings exempted from stamps.

Nor any warrant made by, or recognizance taken before justices of the peace. 6 & 7 *W. c.* 12. *s.* 2.

Nor any warrants or instruments signed by the chief justices in eyre, or by any warden, lieutenant, or other officer of the king's forests or chases. 10 *An. c.* 26. *s.* 74.

Nor any proceedings of a court martial, which relate to the trial of any common soldier. 6 & 7 *W. c.* 12. *s.* 2.

Nor any orders, decrees, or proceedings before commissioners of the sewers. 6 & 7 *W. c.* 12. *s.* 2.

Nor in the court of stannaries. *id.*

Likewise persons admitted to sue or defend *in forma pauperis* shall not be liable to the stamp duties. 5 *W. c.* 21. *s.* 14.

6. For the management of the stamp duties, the king may appoint commissioners; who shall substitute inferior officers. 5 *W. c.* 21. *s.* 7. 9 & 10 *W. c.* 25. *s.* 48. Officers for the stamp duties.

And with regard to the duties on the several acts before the 8 *An.* the said officers, before they shall act, shall take an oath for the due execution of their office, before one or more of the commissioners; and by the said act of the 8 *An.* and the subsequent acts, they may take the said oath, with respect to the duties on those acts, before one or more of the commissioners, or a justice of the peace.

7. The commissioners of the treasury shall once a year at least set the prices of stamped parchment and paper; and the commissioners of the stamp duties shall (besides the stamps abovementioned) stamp the said price upon every piece of parchment and paper. 6 & 7 *W. c.* 12. *s.* 9. Price of the paper to be stamped.

8. By the several acts, the commissioners shall make an allowance for prompt payment, to persons who shall bring parchment or paper to be stamped, or buy the same of them so stamped, the duty whereof shall amount to 10 *l.* or upwards, at any one time. Allowance on prompt payment.

9. If any person shall write on any paper or parchment, before it be duly stamped as by the 5 *W.* he shall forfeit 5 *l.* (And by the 9 & 10 *W.* 5 *l.* more.) And an officer offending, shall over and above forfeit his office. And an attorney offending shall be disabled to practise. 5 *W. c.* 21. *s.* 11. Penalty for writing before stamped.

And if any instrument shall be written by any person (not being a known clerk or officer in respect of his office intitled to write the same) on paper or parchment not duly stamped, there shall be paid over and above the duty the sum of 5 *l.* (and by the 10 & 11 *W.* 5 *l.* more); and the instrument shall not be given in evidence in any court, until both the duty and the said sum shall be paid, and a receipt produced for the same, under the hand of some officer appointed to receive the duties, and until the same shall be stamped. 5 *W. c.* 21. *s.* 11.

And

And by the 9 *An. c.* 23. If any officer of the customs shall sign any debenture not stamped, or if any other person shall write any debenture, bill of lading, or licence by that act charged with the stamp duties, or sign such bill of lading; he shall forfeit 10 *l.* with costs: and an officer of the customs offending shall moreover forfeit his office. And there shall be paid for the same, over and above the duties, 5 *l* to the king; and the instrument shall not be available till that be done.

And by the 10 *An. c.* 19. If any the matters required to be stamped by that act, shall be ingrossed on paper not stamped, there shall be paid for the same (over and above the duties) 5 *l.* in like manner.

M. 13 *G. K.* and *Reeks.* Upon a trial at bar, on an information in nature of a *quo warranto* for the office of burgess of *Christ Church*, the admission of the defendant was produced, and it appeared to be a parchment that had only one stamp, and yet had five admissions entred upon it. And in order to make it good, they had annexed four other parchments, each of which was stamped. And the court held, that would not make it good; and that the proper way would have been, to have paid the four penalties, and to have had four new stamps on the first parchment. And for want of this there was a verdict against this and the other four defendants. *Str.* 716.

Clerk not entring instruments charged with the stamp duties.

10. And to prevent frauds, if any clerk or other officer shall neglect to enter or file any action, plaint, bail, appearance, admission, or other thing in respect whereof any duty is payable, for four months; or shall not file the same before any subsequent proceeding shall be entred; or shall file any such subsequent proceeding before the other shall have been filed as aforesaid; he shall forfeit 20 *l.* Except where judgment is entred by confession. 1 *An. st.* 2. *c.* 22. *s.* 1.

Writing to be near the stamp.

11. And the writing shall be either upon, or as near as conveniently may be to the stamp; on pain of 10 *l.* with full costs. 1 *An. st.* 2. *c.* 22. *s.* 5.

The same stamp not to serve twice.

12. If any person shall write any thing, in respect whereof the stamp duties are payable, on any piece of paper or parchment, whereon there shall have been before any writing in respect whereof any duty was payable, before the same hath been again stamped; or shall erase or scrape out any name, sum, date, or other thing, or fraudulently take off any stamp, with intent to use it in any other thing in respect whereof any duty is payable; he shall forfeit in like manner as for writing on paper unstamped, and also 20 *l.* with full costs. 1 *An. st.* 2. *c.* 22. *s.* 2, 3.

Counterfeiting the stamps.

13. By the several acts, if any person shall counterfeit the stamps, or cause or procure them to be counterfeited, or knowingly sell any paper with such counterfeit stamp; he shall be guilty of felony without benefit of clergy.

Stamp duty on almanacks.

14. For every sheet almanack, for one year or less, printed on one side only, shall be paid 1 *d.* by the 9 *An. c.* 23.

For every other almanack for one year, 2 *d. id.*

And if for more than one year, then 2 *d.* a year. *id.*

But

But this ſhall not charge any almanack for more than if it were made for three years only. 9 *An. c.* 23. *ſ.* 53.

And all books and pamphlets, ſerving chiefly to the purpoſe of an almanack, ſhall be charged as almanacks. 10 *An. c.* 19. *ſ.* 175.

But where an almanack contains more than one ſheet, one ſheet only need to be ſtamped. 9 *An. c.* 23. *ſ.* 26.

And if any perſon ſhall expoſe to ſale any almanack unſtamped, he ſhall forfeit 10 *l.* with coſts. 9 *An. c.* 23. *ſ.* 27.

15. For every journal, mercury, or other publick news paper, ſhall be paid 1 *d.* a ſheet, and ½ *d.* for every half ſheet. 11 *G. c.* 8. Duty on news papers and pamphlets.

For every pamphlet contained in half a ſheet of paper, ½ *d.* 10 *An. c.* 19. *ſ.* 101.

Pamphlet larger than half a ſheet, not exceeding a whole ſheet, for every printed copy thereof, 1 *d. id.*

Pamphlet above one ſheet, and not exceeding 6 ſheets in *octavo* or a leſſer page, or not exceeding 12 ſheets in *quarto*, or 20 ſheets in *folio*, for every ſheet which ſhall be contained in one printed copy thereof, 2 *s. id.*

But news papers printed on a ſheet and an half of paper, ſhall not pay as pamphlets only 3 *s.* for each impreſſion. 11 *G. c.* 8. *ſ.* 13.

(But nothing herein ſhall charge any act of parliament, proclamation, order of council, form of prayer, or other act of ſtate, printed votes, ſchool books, books of devotion, daily accounts of imports and exports, nor weekly bills of mortality. 10 *An. c.* 19. *ſ.* 102.)

And if any perſon ſhall write, print, or expoſe to ſale any ſuch pamphlet or news paper (the ſaid pamphlet exceeding one ſheet only excepted) before the paper ſhall be ſtamped; he ſhall forfeit 10 *l.* with full coſts. 10 *An. c.* 19. *ſ.* 105.

And a printed copy of every pamphlet containing more than one ſheet, ſhall (within the bills of mortality) in 6 days after printing be brought to the head office, and the title, number of ſheets, and duty ſhall be entred in a book, and the duty thereupon paid to the receiver general, who ſhall give a receipt for the ſame on ſuch printed copy, or the ſame ſhall be ſtamped to denote the payment: Without the bills, it ſhall be brought in 14 days to ſome head collector of the ſtamp duties, who ſhall enter the title, number of ſheets, and duty, which duty ſhall be thereupon paid to the collector, who ſhall give a receipt for the ſame on ſuch printed copy. 10 *An. c.* 19. *ſ.* 111.

And if any ſuch pamphlet containing more than one ſheet, ſhall be printed or publiſhed, and the duty not paid, and title regiſtred, and one copy ſtamped where required ſo to be, within the times above limited; the author, printer, and publiſher, and all other perſons concerned, ſhall loſe all property therein, and in every copy thereof, and ſhall alſo forfeit 20 *l.* with full coſts. *id.* 112.

And no perſon ſhall expoſe to ſale any ſuch pamphlet, without the name and place of abode of ſome known perſon, by or for

whom it was printed or publiſhed, written or printed thereon; on pain of 20 *l.* *id.* *ſ.* 113.

And pamphlets unfold ſhall be cancelled by the commiſſioners, and the like number of other ſheets ſtamped *gratis* ſhall be changed for them. *id.* *ſ.* 114.

And two juſtices may hear and determine offences in relation to pamphlets or news papers on this act, in like manner as above is mentioned; and mitigate the penalty, ſo as they do not reduce it lower than one fourth part, over and above the coſts; and where goods of the offender cannot be found, may commit him to priſon till paid. *ſ.* 120.

And by the 16 *G.* 2. *c.* 26. If any perſon ſhall ſell, or expoſe to ſale, any news paper, or any book, pamphlet, or paper, deemed to be a news paper, unſtamped; any juſtice of the peace may commit him (being convicted before him, by confeſſion, or oath of one witneſs) to the houſe of correction for any time not exceeding 3 months: And any perſon may apprehend and carry him before ſuch juſtice: And on producing a certificate of ſuch conviction, under the hand of ſuch juſtice (which he ſhall give without fee), he ſhall have a reward of 20*s.* to be paid by the receiver general of the ſtamp duties. *ſ.* 5.

Duty on advertiſements in news papers.

16. For every advertiſement in the gazette, or other printed paper, publiſhed weekly or oftner, ſhall be paid 1*s.* 10 *An.* *c.* 19. *ſ.* 101.

And the ſaid duty on advertiſements ſhall be paid, within 30 days after the printing or publication, to the receiver general or his deputy, within the bills; and elſewhere to the next adjacent head officer: on pain of treble duty with full coſts. *ſ.* 118.

But this ſhall not extend to any ſingle advertiſement printed by it ſelf. *ſ.* 102.

Duty on cards and dice.

17. Laſt of all, it is thought proper to inſert here the regulations concerning the duties on cards and dice; they being likewiſe under the management of the commiſſioners of the ſtamp duties; and not of ſmall conſideration, ſince a man may be guilty of offences with reſpect thereunto, for which he ſhall loſe his life.

(1) By the 10 *An.* *c.* 19. No playing cards or dice ſhall be imported. *ſ.* 167.

(2) For every pack of cards made in *Great Britain*, ſhall be paid 6*d.* 9 *An.* *c.* 23.

And for every pair of dice 5*s.* *id.*

(3) And all pieces of ivory, bone, or other matter, made or uſed for any game or play, with any ſpots or other marks thereon, to denote any chance, ſhall be deemed dice. 10 *An.* *c.* 19. *ſ.* 168.

(4) All makers of cards or dice, before they begin to make them, ſhall give notice in writing of the houſe or place where they intend to make them, to the commiſſioners of the ſtamp duties, or their officer next adjacent, on pain of 50 *l.* 9 *An.* *c.* 23. *ſ.* 41. And alſo all the cards, dice, materials, and utenſils ſhall be forfeited. 10 *An.* *c.* 19. *ſ.* 166.

(5) And the officers may enter any houſe or place, where cards or dice are made, ſold, or expoſed to ſale, or ſuſpected to be pri-

vately

vately made, or into any publick gaming houſe, room, or place, and there ſearch and ſee what quantity of cards or dice ſhall be making, and whether they be ſtamped; and if the owner or occupier ſhall refuſe entrance or liberty of ſearch, he ſhall forfeit 10 *l.* 10 *An. c.* 19. *ſ.* 169.

(6) And if the commiſſioners be informed, or have cauſe to ſuſpect, that any perſon makes cards or dice in a place not entred, on affidavit thereof by the informer before a juſtice of the peace declaring the grounds of his ſuſpicion; the officer may in the day time, and in the preſence of a conſtable, by warrant of ſuch juſtice break open the door, or any part of ſuch private place, and enter, and ſeize all ſuch cards, dice, tools, or materials; and if not replevied in 5 days, they ſhall be forfeited and ſold. 6 *G. c.* 21. *ſ.* 59.

(7) And no materials begun to be wrought for cards or dice, ſhall be removed until they be compleatly made, or the duties paid; on pain of double duty. 10 *An. c.* 19. *ſ.* 166.

(8) And no maker of cards or dice ſhall remove the ſame from the place of making, until ſuch mark upon the dice, and ſuch ſeal upon the paper and thread incloſing every pack of cards ſhall be put thereon, as the commiſſioners ſhall appoint; on pain of forfeiting the ſame, and treble value. 9 *An. c.* 23. *ſ.* 41.

(9) And every maker of cards and dice, who ſhall endeavour to defraud the king by any concealment, ſhall forfeit 20 *l.* 9 *An. c.* 23. *ſ.* 43.

(10) The makers of cards and dice ſhall once in every 28 days make entry upon oath with the proper officer, of all the cards and dice by them made within the ſaid time; on pain of 20 *l.* 9 *An. c.* 23. *ſ.* 42.

And the card maker ſhall be obliged at the reſpective times of entring, to give bond with ſurety of treble the duty, for payment of the duty in 6 weeks. 6 *G. c.* 21. *ſ.* 57.

(11) And the maker of cards and dice ſhall once in every 6 weeks clear off the duties; on pain of double duty. 9 *An. c.* 23. *ſ.* 42.

And if the card maker ſhall on entry pay down the duty, he ſhall have the like allowance as for preſent payment of the ſtamp duties by the 1 *An. ſt.* 2. *c.* 22. (That is, he ſhall have an abatement after the rate of 6 *l. per cent. per annum* for 6 months.) 6 *G. c.* 21. *ſ.* 58.

(12) And no cards or dice ſhall be expoſed to ſale, or uſed in play in any publick gaming houſe, unleſs the paper and thread incloſing the ſame ſhall have been reſpectively ſealed and ſtamped, and unleſs one of the cards of each pack ſhall be alſo ſtamped on the ſpotted ſide; on pain that every perſon who ſhall expoſe to ſale any ſuch cards or dice not ſtamped, ſhall forfeit for every ſuch pack, and for every one of ſuch dice, 5 *l.* with coſts. 10 *An. c.* 19. *ſ.* 162.

(13) And by the 6 *G. c.* 21. if any perſon ſhall take off the ſtamp of playing cards (in order to put it on a new pack), or ſquare or new ſpot any dice which have been played with, or ſhall incloſe any pack of cards in an outſide paper which hath been

uſed

used before, or shall sell any cards not stamped and inclosed in paper and thread sealed and stamped; he shall forfeit 10 *l.* with full costs. *s.* 55.

(14) And if any person shall counterfeit the stamps on cards or dice, or knowingly sell them with a counterfeit stamp; he shall be guilty of felony without benefit of clergy. 10 *An. c.* 19. *s.* 163.

(15) Nevertheless, it shall be lawful to remove cards or dice from the place where they are made, without stamping or paying duty, provided that within a month after they are made, and before they be removed, bond of double the duty be given, that they shall be exported and not relanded. 10 *An. c.* 19. *s.* 170. 5 *G. c.* 19. *s.* 48.

Star. See Rent.
Starch. See Excise.
Stock of the county. See County rate.

Stocks.

IT is said, that every vill, of common right, is bound to provide a pair of stocks. 2 *Haw.* 73.

And the constable, by the common law, may confine offenders in the stocks, by way of security, but not by way of punishment.

But by divers statutes, the stocks is also appointed for the punishment of offenders in sundry cases, after conviction.

Stock of companies.

IF any person shall forge or counterfeit any power or authority to transfer any share of any capital stock of any company established by act of parliament, or to receive the same, or shall forge or counterfeit the name of any proprietor, or person intitled to a dividend, or shall fraudulently demand, or endeavour to have any such share received by virtue of such counterfeit instrument, or shall personate any proprietor of any such share of such stock; he shall be guilty of felony without benefit of clergy. 8 *G. c.* 22. *s.* 1.

Stolen goods. See Search warrant, Restitution.

Stores.

1. IF any person having the charge or custody of any of the king's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals provided for victualling the army, shall for lucre or gain, wittingly, advisedly, and of purpose, to hinder his majesty's service, imbezil, purloin, or convey away the same to the value of 20 *s.* or shall feloniously steal or imbezil any of his majesty's sails, cordage, or any other of his majesty's naval stores, to the like value of 20 *s.* he shall (on prosecution within a year) be adjudged guilty of felony without benefit of clergy. 31 *El. c.* 4. 22 *C.* 2. *c.* 5. Imbezilling to the value of 20 s.

2. And any of the principal officers or commissioners of the navy, may issue warrants to search for the same, and punish the offenders by fine not exceeding 20 *s.* or imprisonment not exceeding one week, the value of the goods not exceeding 20 *s.* and if the offence requires a higher punishment, may commit him till he find sureties to appear in the exchequer, or other court where the king shall question him for the same, within one year, on process duly served for that purpose on such offender. 1 *G. st.* 2. *c.* 25. *s.* 3. Under the value of 20 s.

3. And every person who shall counterfeit the hand of any officer of the navy to any paper whereby his majesty's naval treasure may be disposed of, or knowingly produce the same, he may be bound over by the said officers and commissioners, or any of them, until he find surety to appear at the next assizes or quarter sessions, to be there proceeded against according to law. 1 *G. st.* 2. *c.* 25. *s.* 6. Counterfeiting a naval officer's hand.

4. No person, other than persons authorized by contracting with his majesty's officers, shall make any stores of war or naval stores with the king's mark, that is, cordage of 3 inches and upwards with a white thread laid the contrary way, or any smaller cordage with a twine in lieu of white thread laid the contrary way, or any canvass with a blue streak in the middle, or any other stores with the broad arrow; on pain of forfeiting the same, and 200 *l.* with costs (on conviction at the assizes or sessions, 17 *G.* 2. *c.* 40. *s.* 10, 11.) half to the king, and half to the informer. 9 & 10 *W. c.* 41. Making stores with the king's mark.

And such person in whose custody such goods or stores so marked (or any timber, thick stuff, or plank, marked with the broad arrow, 9 *G. c.* 8. *s.* 3.) shall be found, shall forfeit the same and 200 *l.* with costs in like manner, and be imprisoned till paid, unless he shall upon trial produce a certificate from three principal officers of the navy, expressing the quantity, and on what occasion he came by them. 9 & 10 *W. c.* 41.

But the judge or justices may mitigate the penalty as they shall see cause, and may commit the offender to gaol till payment, or may punish him corporally by causing him to be publickly whip-

ped, or committed to ſome publick workhouſe to be kept to hard labour for 6 months or a leſs time. 9 *G. c.* 8. *ſ.* 4.

Pardon. 5. Imbezilling or purloining of armour, ſtores, naval proviſions, and other habiliments of war, are excepted out of the general pardon of the 20 *G.* 2. *c.* 52.

Subornation. See Perjury.
Sunday. See Lord's day.

Surety for the peace.

OUT of the *Latin* word *pax*, the *Normans* formed their *paix*, and we (out of that) out *peace*. Lamb. 5.

Surety for the peace is the acknowledging a recognizance, or bond, to the king, taken by a competent judge of record, for the keeping the peace. *Dalt. c.* 116.

And this ſurety of the peace, every juſtice of the peace may take and command, by a two fold authority: 1. As a miniſter, commanded thereto by a higher authority: as when a writ of *ſupplicavit*, directed out of the chancery or king's bench, is delivered to him. 2. As a judge, and by virtue of his office, derived from his commiſſion. *Dalt. c.* 116.

Concerning which I will ſhew,

I. For what cauſe ſurety of the peace ſhall be granted.
II. At whoſe requeſt it ſhall be granted.
III. Againſt whom it ſhall be granted.
IV. In what manner it ſhall be granted.
V. How the peace warrant may be ſuperſeded.
VI. How the peace warrant ſhall be executed.
VII. What ought to be the form of a recognizance for the peace.
VIII. How ſuch recognizance ſhall be certified.
IX. How ſuch recognizance may be forfeited.
X. How the recognizance being forfeited ſhall be proceeded on.
XI. How ſuch recognizance may be diſcharged.

I. For what cause surety of the peace shall be granted.

1. By the commission of the peace, one or more justices have power *to cause to come before them, all those who to any of the king's people concerning their bodies, or the firing of their houses, have used threats, to find sufficient security for the peace or their good behaviour towards the king and his people; and if they shall refuse to find such security, to cause them in the king's prisons to be safely kept, until they shall find such security.*

2. Upon which Mr. *Hawkins* observes, that it seemeth clear, that wherever a person has just cause to fear, that another will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person, and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath, that he is actually under such fear, and that he has just cause to be so, by reason of the other's having threatned to beat him, or lain in wait for that purpose; and that he doth not require it out of malice, or for vexation. 1 *Haw.* 127.

3. Also it seems the better opinion, that he who is threatned to be *imprisoned* by another, has a right to demand the surety of the peace; for every unlawful imprisonment is an assault and wrong to the person of a man. And the objection, that one wrongfully imprisoned may recover damages in an action, and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt, but that one threatned to be beaten, may demand the surety of the peace. 1 *Haw.* 127.

4. But if the justice shall perceive that surety is demanded merely of malice, or for vexation only, without any just cause of fear, it seemeth he may safely deny it. As in common experience we find it, that where a person shall upon a just cause come and crave the peace against another, and hath it granted to him; when such other person shall come before the justice, he likewise will crave the peace against the former, and will perhaps surmise some cause; but yet will nevertheless be content to surcease his suit and demand, so as the other will relinquish to have the peace against him: Here the justice shall do well not to be too forward in granting the peace thus required by the latter, but to persuade him, and to shew him the danger of his oath which he is to take; but yet if he will not be persuaded, but will take his oath, that he is in fear, where indeed he neither doth fear, nor hath cause to fear, this oath shall discharge the justice, and the fault shall remain on such complainant. *Dalt. c.* 116.

5. Also, if a man will require the peace, because he is *at variance*, or *in suit* with his neighbour, it shall not be granted. *Dalt. c.* 116.

6. Also, Mr. *Lambard* says, he takes it to be somewhat clear, that a justice may not by the commission award a precept of the

peace, in behalf of a man that will require it, becauſe he feareth that he will do harm to his *ſervants* or *cattle*. Lamb. 83.

And Mr. *Dalton* ſays, where a man is in fear that another will hurt his ſervants, or his cattle, or other goods, this ſurety of the peace ſhall not be granted by the juſtice. But in this caſe *Fitzherbert* ſaith, the party may have a ſpecial writ out of the chancery directed to the ſheriff, that he ſhall cauſe ſuch perſon to find ſurety, that he ſhall do no hurt or damage to the other man in his body, or to his ſervants or goods; and if he will not find ſurety, that then he ſhall arreſt and detain him in priſon until he ſhall find ſurety. *Dalt. c.* 116.

And the reaſon why a man may not have ſureties of the peace againſt another, for that he feareth he will do harm to his *ſervants*, ſeemeth to be, becauſe it ſhould be the *ſervant*'s fear in ſuch caſe, and not the *maſter*'s; and the ſervant's own oath before the juſtice is neceſſary. And as to his *goods*, it ſeemeth clear, that no ſureties of the peace ought to be granted in that caſe; for the recognizance of the peace when taken, is only that the party ſhall keep the peace towards the king and all his liege people.

But Mr. *Dalton* ſays, that if a man ſhall threaten to hurt his *wife*, or *child*, he thinks he may crave the peace at the juſtice's hands, by the words of the commiſſion, and that the juſtice ought to grant it. *Dalt. c.* 116.

7. Note alſo, the ſurety of the peace ſhall not be granted, but where there is a fear of ſome preſent or future danger, and not merely for a battery or treſpaſs that is paſt, or for any breach of the peace that is paſt; for this ſurety of the peace is only for the ſecurity of ſuch as are in fear: But the party wronged may puniſh the offender by indictment; and the juſtice, if he ſee cauſe, may bind over the affrayer. *Dalt. c.* 116. That is, he may bind him over to anſwer unto the indictment.

II. At whoſe requeſt it ſhall be granted.

1. As to this, Mr. *Hawkins* ſays, It ſeems to be agreed at this doy, that all perſons whatſoever, under the king's protection, being of *ſane memory*, whether they be natural and good ſubjects, or *aliens*, or *excommunicate*, or attainted of *treaſon*, have a right to demand ſurety of the peace. And it is certain, a *wife* may demand it againſt her huſband threatning to beat her outrageouſly, and that a *huſband* alſo may have it againſt his wife. 1 *Haw.* 126. *Crom.* 118.

Upon which Maſter *Crompton* obſerveth, that if the wife in ſuch caſe cannot find ſureties, ſhe ſhall be committed; and ſo, ſays he, a man may be rid of a ſhrew. *Crom.* 118.

2. And Mr. *Dalton* ſays, an *infant* under the age of 14 years, may demand this ſurety, and it ſhall be granted him. *Dalt. c.* 117.

3. But as to a perſon of *non ſane memory*, Mr. *Dalton* ſays, this ſurety ſhall neither be granted againſt him nor to him upon his own requeſt; but yet if there ſhall be cauſe, the juſtice ought to provide for his ſafety. *Dalt. c.* 117.

III. Againſt

III. Against whom it shall be granted.

There seems to be no doubt, but that it ought, upon a just cause of complaint, to be granted by any justice of the peace, against any person whatsoever, under the degree of nobility, being of sane memory, whether he be a magistrate or private person, and whether he be of full age, or under age. But infants and femes covert ought to find security by their friends, and not to be bound themselves. And the safest way of proceeding against a *peer*, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

IV. In what manner it shall be granted.

1. It seemeth certain, that if the person to be bound be in the presence of the justice, he may be immediately committed, unless he offer sureties; and from hence it follows *a fortiori*, that he may be commanded by word of mouth to find sureties, and committed for his disobedience: But it is said, that if he be absent, he cannot be committed without a warrant from some justice in order to find sureties, and that such warrant ought to be under seal, and to shew the cause for which it is granted, and at whose suit (that the party may provide his sureties), and that it may be directed to any indifferent person. 1 *Haw.* 128.

2. The justice may make the warrant, to bring the party before himself or some other justice, or he may make it to bring the party before himself only; for he that maketh the warrant for the most part hath the best knowledge of the matter, and therefore he is the fittest to do justice in the case. 5 *Co.* 59.

3. As to the granting process of the peace or good behaviour, out of the chancery or king's bench, it is enacted by the 21 *J. c.* 8. that it shall not be granted but upon motion in open court, and declaration in writing and upon oath, to be exhibited by the party desiring such process, of the causes for which such process shall be granted; the motion and declaration to be mentioned on the back of the writ. And if it shall afterwards appear, that the causes are untrue, the court may order costs to the party grieved, and commit the offender till paid.

V. How the peace warrant may be superseded.

1. It is said, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the same county, either before or after a warrant is issued against him, he may have a *supersedeas* from such justice, which shall discharge him from arrest from any other justice, at the suit of the same party, for whose security he has given such surety. 1 *Haw.* 129.

2. In which *supersedeas* it is not necessary to name either the sureties, or the sums in which they are bound; but yet it is the better form to express them both. *Dalt. c.* 118.

3. Alſo, it is ſaid, that an appearance upon a recognizance for the peace may be ſuperſeded, by finding ſureties in the chancery or king's bench, and purchaſing a writ teſtifying the ſame; but this practice having been often abuſed, it is enacted by the 21 *J. c.* 8. that no writs of *ſuperſedeas* ſhall be granted out of the chancery or king's bench, but upon motion in open court, and on ſuch ſufficient ſureties as ſhall appear on oath to the court, to be aſſeſſed in the ſubſidy book at 5 *l.* lands, or 10 *l.* goods, and unleſs it ſhall alſo firſt appear to the court, that the proceſs of the peace or good behaviour is proſecuted againſt him, deſiring ſuch *ſuperſedeas bona fide* by ſome party grieved in that court, out of which the *ſuperſedeas* is deſired to be awarded. 1 *Haw.* 129.

VI. How the peace warrant ſhall be executed.

1. It can be executed only by the perſons to whom it is directed, or ſome of them, unleſs it be directed to the ſheriff, who may either by parol, or by precept in writing, authorize an officer ſworn and known, to ſerve it, but cannot impower any other perſon without a precept in writing. 1 *Haw.* 128.

2. It ſeems generally agreed, that where a perſon authorized by warrant of a juſtice of the peace to compel a man, who is ſheltred in an houſe, to find ſureties for the peace or good behaviour, is denied quietly to enter into it, he may juſtify breaking open the doors, in order to take him; but he muſt firſt ſignify to thoſe in the houſe the cauſe of his coming, and requeſt them to give him admittance. 2 *Haw.* 86.

3. If the warrant ſpecially direct that the party ſhall be brought before the juſtice who made it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any juſtice of ſuch place, the officer has the election to bring him before what juſtice he pleaſeth, and may carry him to priſon for refuſing to find ſurety before ſuch juſtice. 1 *Haw.* 128.

4. And if the party is carried before another juſtice, and not before him who iſſued the warrant, ſuch other juſtice muſt take the ſurety, and bind him by recognizance in all points as the form of the precept doth require. And thereupon ſuch other juſtice, having ſo taken ſurety of the peace, may and ought upon requeſt, to make his *ſuperſedeas* to all officers, and to all other juſtices of the ſame county; and thereby the ſaid party ſhall be diſcharged from finding other ſurety, and from any other arreſt for the ſame cauſe. But by ſuch *ſuperſedeas*, the other juſtice cannot diſcharge the warrant of the firſt juſtice, until the party be bound indeed, nor give any other day to the party to appear. *Dalt. c.* 118.

5. If the warrant be in the common form, requiring the officer to cauſe the party complained of to come before the juſtice to find ſufficient ſurety, and if he ſhall refuſe ſo to do, to convey him immediately to priſon, without expecting any further warrant, until he ſhall willingly do the ſame, the officer who ſerves it, before he makes any arreſt, ought firſt to require the party to go with him, and find ſureties according to the purport of the warrant; but upon refuſal to do either, that is, either to go before

fore the juſtice, or to find ſureties, he may carry him to the gaol by force of the ſame warrant, without more. 1 *Haw.* 128. *Dalt. c.* 118.

And yet the conſtable, or officer, may bring him in that caſe before the juſtice; and if he refuſes there to give ſureties, he may commit him without any further warrant or *mittimus.* 2 *H. H.* 112.

Nevertheleſs, notwithſtanding theſe great authorities, it may not be convenient for the juſtice, to leave ſo much to the conſtable's judgment, as to determine what ſhall or ſhall not be deemed a refuſal to find ſuch ſureties; for that the conſtable is conſtituted a judge in ſuch caſe by no law. And much leſs doth it ſeem adviſable, to require in the warrant, as is uſual, that the conſtable ſhall carry the party to gaol, if he ſhall refuſe to find *ſufficient* ſureties; for it doth not appear, how the conſtable can any way be deemed a competent judge of that; for it is certain, that he cannot adminiſter an oath to ſuch ſureties, or others, whereby to inform himſelf of ſuch ſufficiency.

6. If the officer do arreſt the party, and do not carry him before the juſtice to find ſureties; or upon the refuſal of the party, if the officer ſhall arreſt him, and do not carry him to the gaol, in both theſe caſes the officer is puniſhable by the juſtices for this neglect, by indictment and fine at their ſeſſions: And alſo the party arreſted may have his action of falſe impriſonment for the arreſt; for where the officer doth not purſue the effect of his warrant, his warrant will not excuſe him of that which he hath done. *Dalt. c.* 118.

7. When the party cometh before the juſtice, he muſt offer ſureties, or elſe the juſtice may commit him; for the juſtice needeth not to demand ſurety of him. *Dalt. c.* 118, 169.

8. If the juſtice was deceived in the ſufficiency of the ſureties, he or any other juſtice may afterwards compel the party to find and put in other ſufficient ſureties, and may take a new recognizance for the ſame. *Dalt. c.* 116, 119.

9. But if the ſureties die, the party principal ſhall not be compelled to find new ſureties. *Dalt. c.* 119. Becauſe their executors or adminiſtrators are liable.

10. Alſo if a man, that was bound to keep the peace, hath broken his bond, the juſtices ought of diſcretion to bind him anew. *Lamb.* 78.

But not until he be thereof convicted by due courſe of law; for before conviction, he ſtandeth indifferent, whether he hath forfeited his recognizance or not. *Crom.* 125.

VII. What ought to be the form of a recognizance for the peace.

1. The recognizance which the juſtice takes for the keeping of the peace, is rather of congruity, than by any expreſs authority given either by the common law, or by ſtatute. *Dalt. c.* 168.

2. If it is taken in purſuance of a writ of *ſupplicavit*, it muſt be wholly governed by the directions of ſuch writ: But if it be

taken before a juſtice, upon a complaint below, it ſeems that it may be regulated by the diſcretion of ſuch juſtice, both as to the number and ſufficiency of the ſureties, and the largeneſs of the ſum, and the continuance of the time for which the party ſhall be bound. And it hath been ſaid, that a recognizance to keep the peace as to any perſon, for a year, or for life, or without expreſſing any certain time (in which caſe it ſhall be intended for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace againſt all the king's people in general, is good. 1 *Haw.* 129.

3. However it ſeems to be the ſafeſt way, to bind the party to appear at the next ſeſſions of the peace, and in the mean time to keep the peace as to the king and all his liege people, eſpecially as to the party, according to the common form of precedents. 1 *Haw.* 129.

VIII. *How ſuch recognizance ſhall be certified.*

If it be taken by force of a writ of *ſupplicavit*, it needs not be certified till the juſtice receive a writ of *certiorari* to that purpoſe. But if it be taken upon a complaint below, it muſt be certified, ſent, or brought to the next ſeſſions, by force of the ſtatute of the 3 *H.* 7. *c.* 1. that the party ſo bound may be called. 1 *Haw.* 130.

IX. *How ſuch recognizance may be forfeited.*

1. There are divers things which may be done againſt the peace, and divers offences for which an indictment againſt the peace will lie; and yet the committing or doing ſuch offence or act ſhall be no forfeiture of the recognizance for the peace: for that the act that ſhall cauſe a forfeiture of ſuch recognizance muſt be done or intended unto the *perſon* as is aforeſaid, or in terror of the people. Therefore to enter into lands, where he ought to bring his action; or to diſſeiſe another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's perſon, and without publick terror; or to do a treſpaſs in another man's corn or graſs; or to take away another man's goods wrongfully, ſo it be not from his perſon; or to ſteal another man's horſe, or other goods feloniouſly, being not from his perſon: All theſe, and the like, are breaches of the peace, and yet theſe will make no breach of this recognizance, nor breach of the peace within the meaning of the commiſſion of the peace. *Dalt. c.* 121.

2. More particularly; The recognizance is forfeited, if the party make default of appearance, and the ſame default ſhall be recorded. 3 *H.* 7. *c.* 1.

However, if the party have any excuſe for his not appearing, it ſeems that the ſeſſions is not bound peremptorily to record his default, but may equitably conſider of the reaſonableneſs of ſuch excuſe. 1 *Haw.* 130.

And Mr. *Dalton* ſays, in caſe of the ſickneſs of the party, ſo that he cannot appear, he has known that the juſtices upon due proof thereof have forborn to certify or record ſuch forfeiture or default; and that they have taken ſureties for the peace of ſome friends of his preſent in court, until the next ſeſſions; for that the principal intent of the recognizance was but the preſervation of the peace. But he queries how this is warrantable by their oath. *Dalt. c.* 120.

3. Alſo, there is no doubt, but that it may be forfeited by any actual violence to the perſon of another, whether it be done by the party himſelf, or by others thro' his procurement; as manſlaughter, rape, robbery, unlawful impriſonment, and the like. 1 *Haw.* 130.

4. Alſo it hath been holden, that it may be forfeited by any treaſon againſt the king's perſon, and alſo by any unlawful aſſembly in terror of the people, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his preſence threatning to beat him. 1 *Haw.* 130.

Otherwiſe it is if the party be abſent; and yet if the party ſo bound ſhall threaten to kill or beat a perſon who is abſent, and after ſhall lie in wait for him to kill or beat him, this is a forfeiture of the recognizance. *Dalt. c.* 121.

5. However, it ſeems that it ſhall not be forfeited by bare words of heat and choler, as the calling a man knave, teller of lies, raſcal, or drunkard; for tho' ſuch words may provoke a cholerick man to break the peace, yet they do not directly challenge him to it, nor does it appear that the ſpeaker deſigned to carry his reſentment any farther: And it hath been ſaid, that even a recognizance for the good behaviour ſhall not be forfeited for ſuch words; from whence it follows *a fortiori*, that a recognizance for the peace ſhall not. 1 *Haw.* 130.

6. Alſo, there are ſome actual aſſaults on the perſon of another, which do not amount to a forfeiture of ſuch recognizance; as if an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to take him; or if a parent in a reaſonable manner chaſtiſe his child; or a maſter his ſervant, being actually in his ſervice at the time; or a ſchoolmaſter his ſcholar; or a gaoler his priſoner; or even a huſband his wife, as ſome ſay; or if one confine a friend who is mad, and bind and beat him, in ſuch a manner as is proper in his circumſtances; or if a man force a ſword from one who offers to kill another therewith; or if a man gently lay his hands upon another, and thereby ſtay him from inciting a dog againſt a third perſon; or if a man beat another (without wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to diſpoſſeſs him of his land or goods, or the goods of another delivered to him to be kept, and will not deſiſt upon his laying his hands gently on him, and diſturbing him; or if a man beat, or as ſome ſay, wound, or maim one who makes an aſſault upon his perſon, or that of his wife, parent, child, or maſter, eſpecially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with, or beat

beat one who attempts to kill any ſtranger; or if a man even threaten to kill one, who puts him in fear of death, in ſuch a place where he cannot ſafely fly from him; or if one impriſon thoſe whom he ſees fighting, till the heat is over. 1 *Haw.* 130, 131.

X. How the recognizance being forfeited ſhall be proceeded on.

It is ſaid, that the juſtices cannot in any caſe proceed againſt the party, for a forfeiture of his recognizance, either in reſpect of his not appearing, or breaking the peace; but that the recognizance it ſelf, with the record of default of appearance, ought to be removed into ſome of the courts at *Weſtminſter*, who ſhall proceed by *ſcire facias* upon ſuch recognizance: And ſo it ought to be, if it be preſented by the jury, or great inqueſt, that the party hath forfeited his recognizance, by breach of the peace. 1 *Haw.* 130. *Dalt. Old Ed. c.* 70.

XI. How ſuch recognizance may be diſcharged.

1. He who is bound to the peace, and to appear at a certain day, muſt appear at that day, and record his appearance, altho' he who craved the peace cometh not to deſire that it may be continued; otherwiſe the recognizance cannot be diſcharged. *Dalt. c.* 120.

2. If the recognizance be made to keep the peace generally, without any time or day limited, it ſhall be conſtrued to be during the party's life; and this the juſtice may do upon reaſonable cauſe: but if ſuch ſurety be ſo taken, during the offender's life, neither the king, nor the juſtice, nor the party, can releaſe or diſcharge it: And therefore the juſtice muſt be well adviſed, how he granteth ſuch ſurety. *Dalt. c.* 119, 120.

3. But it ſeems to be agreed, that it may be diſcharged by the death or demiſe of the king in whoſe reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. 1 *Haw.* 129.

4. Alſo, it hath been holden, that it may be diſcharged by the releaſe of the party at whoſe complaint it was taken, being certified together with it; but this may juſtly be queſtioned, becauſe the recognizance is not to the ſubject but to the king; and conſequently cannot be diſcharged by the ſubject, who is not a party to it: however, ſuch a releaſe will be a good inducement to the court, to which ſuch a recognizance ſhall be certified, to diſcharge it. 1 *Haw.* 129.

5. And if a man be bound to keep the peace towards the king and all his people, but not towards any perſon certain, and to appear at ſuch a ſeſſions, the court at that ſeſſions may make proclamation, that if any man can ſhew cauſe, why the peace granted againſt ſuch a one ſhall be continued, he ſhall ſpeak; and if no perſon cometh to demand the peace againſt him, or to ſhew cauſe why it ſhould be continued, then the court may diſcharge him.

But

But if a man be bound as aforesaid, *and especially to keep the peace towards a certain person*, there tho' such person cometh not to desire the peace may be continued, yet the court by their discretion may bind him over till the next sessions, and that may be to keep the peace against that person only if they shall think good; for it may be that the person who first craved the peace is sick, or otherwise letted, so as he cannot come to that sessions to demand the continuance of the peace further. *Dalt. c.* 120.

6. Also it is certain, that such a recognizance cannot be pardoned or released by the king, before it is broken; because the subject hath a kind of interest in it; but being forfeited, then the king, and no other, may release and pardon the forfeiture. 1 *Haw.* 129.

7. And it is said, that the sureties are not discharged by their death; but that their executors or administrators (as hath been said) do continue bound. 1 *Haw.* 129. *Dalt. c.* 120.

8. Likewise, if the party be imprisoned for default of sureties, and after, he that demanded the peace against him happen to die; it seemeth the justice may make his liberate or warrant for the delivery of such prisoner, for after such death, there seemeth no cause to continue the other in prison. Also, any justice may, upon the offer of such prisoner, take surety of him for the peace, and may thereupon deliver him. *Dalt. c.* 118.

Surety for the good behaviour.

A MAN may be compelled to find sureties, both for the good behaviour, and for the peace; and yet the good behaviour includeth the peace: and he that is bound to the good behaviour, is therein also bound to the peace. *Dalt. c.* 122.

This surety for the good behaviour being of near affinity to surety for the peace, both as to the manner in which it is to be taken, superseded, and discharged, it seemeth not to require a particular consideration, save only as to these two points;

I. For what misbehaviour it is to be required.
II. For what it shall be forfeited.

I. For what misbehaviour it is to be required.

1. It doth not appear, that the conservators of the peace at common law had any power as touching the *good behaviour*, further than as it had a relation to the *peace*; and not as it is contradistinguished from it. And it seemeth, that the power which the justices of the peace do exercise at this day, in relation thereunto, doth solely depend upon the commission of the peace, and the statute of the 34 *Ed.* 3. *c.* 1. (Except in some special instances wherein the power of binding to the good behaviour is given to them by particular statutes, which pertain not to this general title.)

2. The

2. The words in the commiſſion are theſe: *We have aſſigned you, jointly and ſeverally, and every one of you, our juſtices to keep our peace—and to cauſe to come before you, or any of you, all thoſe who to any one or more of our people, concerning their bodies, or the firing their houſes, have uſed threats, to find ſufficient ſecurity for the peace, or their good behaviour, towards us and our people; and if they ſhall refuſe to find ſuch ſecurity, then them in our priſons, until they ſhall find ſuch ſecurity, to cauſe to be ſafely kept.*

3. The ſtatute of the 34 *Ed.* 3. *c.* 1. as to this matter runs thus: *In every county ſhall be aſſigned for the keeping of the peace, one lord, and with him three or four of the moſt worthy in the county, with ſome learned in the law; and they ſhall have power to reſtrain the offenders, rioters, and all other barators, and to purſue, arreſt, take, and chaſtiſe them according to their treſpaſs or offence; and to cauſe them to be impriſoned and duly puniſhed, according to the law and cuſtoms of the realm, and according to that which to them ſhall ſeem beſt to do by their diſcretions and good adviſement; and alſo to inform them, and to inquire of all thoſe that have been pillors and robbers in the parts beyond the ſea, and be now come again, and go wandring, and will not labour as they were wont in times paſt; and to take and arreſt all thoſe that they may find by indictment, or by ſuſpicion, and to put them in priſon; and to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people, and the other duly to puniſh, to the intent that the people be not by ſuch rioters or rebels troubled nor endamaged, nor the peace blemiſhed, nor merchants nor other paſſing by the high-ways of the realm diſturbed, nor put in the peril which may happen of ſuch offenders.*

4. This ſtatute ſeems to have had in view chiefly the diſorders to which the country was then liable, from great numbers of diſbanded ſoldiers, who having ſerved abroad in the wars of that victorious king, were grown ſtrangers to induſtry, and were rather inclined to live upon rapine and ſpoil. *Barl.* 524.

5. But whatever the natural and obvious ſenſe of it may be, when compared with the hiſtory and circumſtances of thoſe times, it is certain that it hath been carried much farther by conſtruction, and the purport of it hath been extended by degrees, until at length there is ſcarcely any other ſtatute, which hath received ſuch a largeneſs of interpretation.

And that I may proceed with clearneſs in a matter ſo eſſential to the office of a juſtice of the peace, I will ſet down the ſeveral expoſitions which have been given of this ſtatute from time to time, by learned men; and then raiſe ſuch obſervations thereupon, as the ſubject will naturally ſuggeſt.

6. The firſt unfolding of the ſenſe of this ſtatute which hath occurred, was in the caſe of Sir *Richard Croftes* and Sir *Richard Corbet*, in the ſecond year of the reign of king *Hen.* 7. wherein it was reſolved by all the judges for that purpoſe aſſembled, that he who is bound to the good behaviour, ought not to do any thing which ſhall be cauſe of breach of the peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of all things

which

which concern the peace: But not in misdoing of other things, which touch not the peace. Yet a diversity was observed, between a breach of the peace, and a breach of the good behaviour; for the peace is not broken without an affray or battery, but the good behaviour may be forfeited by the number of people a man has, and by their harness, or weapons, and the like, altho' they break not the peace. 2 *H.* 7. 2.

7. The second instance, and upon which much stress hath been laid, was in the 13th year of the same king. In trespass of assault, battery, and imprisonment, at *D.* the defendant saith, that one *Alice B.* had a house in the same town, and kept there suspicious people, to wit, of common bawdry, and that the plaintiff oftentimes resorted to the same house suspiciously, with women of bad fame and name, whereby the constable of the same town required the defendant to aid him to arrest the plaintiff, to find surety of his good behaviour: whereby the defendant came with the said constable at the hour of 12 in the night, and him found suspiciously in the same place; whereupon he took him, and put him in ward: And it was holden by all the justices to be a good justification; for they said, that it is lawful for every constable to take suspected persons, which wake in the night, and sleep in the day, or that keep suspicious company. 13 *H.* 7. 10.

8. In the next place, Sir *Anthony Fitzherbert*, who lived in the reign of K. *Hen.* 8. saith, that it seemeth that one justice may, by the commission, issue a warrant against a person to find surety of the good behaviour, by his discretion, as well as two justices may; and the words of the statute of the 34 *Ed.* 3. are to the same effect: Otherwise, he says, damage may happen to some of the king's subjects, if the party be not attached, before that two justices have made the precept; yet (he says) the common usage is, to make such precept of the good behaviour in the name of two justices, and it is good to observe this direction. *Fitzh.* 7. *Crom.* 122.

9. In the next place, it is proper to take notice of a case adjudged in the court of king's bench, in the 30th of Q. *Eliz.* reported by L. *Coke*, 4 *Inst.* 181. which was thus: At a sessions at *Bridgewater*, in the county of *Somerset*, one *William King* with sureties was bound by recognizance to appear at the next general sessions of the peace in the same county; and in the mean time to be of the good behaviour towards the queen and all her people. And after, at the next sessions, *William King* appeared, and was indicted for slanderous words spoken since his binding, to wit, for saying at one time to *Edward Kyrton*, esquire, *Thou art a pelter, thou art a lyar, and hast told my lord lyes.* And he was further indicted, that since the said recognizance, *the close of one* John Wich *with force and arms he broke and entred, and the cattle of the said* John *depasturing in the said close unlawfully vexed and chased.* And afterwards at another time he said to the said *Kyrton, thou art a drunken knave.* Which indictment was removed into the king's bench. And hereupon it was debated divers times both at the bar and the bench, whether admitting all that is contained in the indictment to be true, any thing therein was in judgment

of

of law a breach of the ſaid recognizance. And it was reſolved, that neither any of the words, nor the treſpaſs, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace; for tho' the ſaid words *thou art a lyar, thou art a drunken knave,* are provocations, yet they tend not immediately to the breach of the peace; as if *William King* had challenged *Kyrton* to fight with him, or had threatned to beat or wound him, or the like; theſe tend immediately to the breach of the peace, and therefore are breaches of the recognizance of the good behaviour. And this diverſity (Lord *Coke* ſays) was juſtly collected upon the coherence and context of the ſtatute of the 34 *Ed.* 3. whereby juſtices are aſſigned for keeping of the peace, and to reſtrain the offenders, rioters, and all other barators, and to chaſtiſe them according to their treſpaſs and offence; and to inquire of pillors and robbers in the parts beyond the ſeas, and be now come again, and go wandring and will not labour: And thus much for the puniſhment of offences againſt the peace after they be done. Then followeth an expreſs authority given to the juſtices, for prevention of ſuch offences before they be done, namely, *and to take of all them that be not of good fame* (that is, that be defamed and juſtly ſuſpected that they intend to break the peace) *where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people* (which muſt concern the king's peace, as is alſo provided by the words ſubſequent) *to the intent that the people be not by ſuch rioters troubled or endamaged, nor the peace blemiſhed, nor merchants nor other paſſing by the highways diſturbed, nor put in the peril that may happen of ſuch offenders.* And as for the treſpaſs; altho' every wrongful treſpaſs is by force and arms, and againſt the peace, yet theſe are not taken to be ſuch as ſhall make a breach of the good behaviour.

10. After this, Mr. *Lambard*, who wrote towards the beginning of the reign of K. *James* 1. ſaith thus: Surety of the good abearing is of great affinity with that of the peace; as being provided for preſervation of the peace, as that other is; for in the commiſſion of the peace, they are both conveyed under one tract of ſpeech, againſt ſuch as threaten to hurt mens bodies, or fire their houſes: which things (he ſays) are now commonly prevented by ſurety of the peace only.

And in the 2 *H.* 7. 2. (above recited) the ſurety of the good abearing is ſet forth to reſt in this point chiefly, that a man do nothing that may be cauſe of a breach of the peace; and that it doth not conſiſt in the obſervation of things that concern not the peace; and that it ſhould differ from ſurety of the peace in this, that where the peace is not broken without an affray, or battery, or ſuch like, this ſurety may be broken by the number of a man's company, or by his or their weapons or harneſs.

And herewithal (he ſays) do alſo agree certain precedents in the king's bench.

But all this notwithſtanding, he thinks that a man may reaſonably affirm, that the ſurety of good abearing ſhould not be reſtrained to ſo narrow bounds.

In

In proof of which, he proceeds to comment on the abovementioned ſtatute of the 34 *Ed.* 3. enabling the keepers of the peace *to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good abearing, towards the king and his people:* So that if a man be defamed, he may by virtue hereof, be bound to his good behaviour at the diſcretion of the juſtices. Now the doubt reſteth in this; to underſtand concerning what matters this defamation muſt be: and this (he thinks) may be partly gathered out of the ſaid ſtatute; for after it hath firſt given power to the wardens of the peace to arreſt and chaſtiſe offenders (that is to ſay, againſt the peace, rioters, and barators) then it willeth them to *inquire of ſuch as having been robbers beyond the ſea, were come over hither, and would not labour as they were wont*; and laſtly, it authorizeth them, *to take ſurety of the good behaviour of ſuch as be defamed*, namely, for any of thoſe former offences; for ſo it ſtandeth well together that they ſhall both puniſh ſuch as have already ſo offended, and ſhall alſo provide, that others ſhall not likewiſe offend.

But he ſays, the further this bond of the good abearing doth extend, the more regard there ought to be taken in the awarding of it; and therefore (ſays he) altho' the juſtices have power to grant it, either by their own diſcretion or upon the complaint of others, even as they may that of the peace, yet I wiſh rather, that they do not command it but only upon ſufficient cauſe ſeen to themſelves, or upon the complaint of other very honeſt and credible perſons.

And then, being about to ſet forth the form of a warrant, and of a recognizance for the good behaviour, he ſays,——And here, foraſmuch as one juſtice alone, and out of ſeſſions, may both by the firſt clauſe of the commiſſion, and alſo by the opinion of *Fitzherbert*, grant this ſurety of the good abearing (altho' the common practice be, that two ſuch juſtices do join in that doing, whereof alſo *Fitzherbert* hath very good liking) I will not ſtick to ſet forth the common forms as well of the precept as of the recognizance for the ſame, wherein if I ſhall uſe the names of two juſtices, you muſt take that to be done according to the common faſhion, and not of any neceſſity in law. For as I would more gladly uſe the aſſiſtance of a fellow juſtice in this behalf, if I may conveniently have it; ſo if that may not be gotten, I would not greatly fear, when good cauſe ſhall require, to undertake the thing my ſelf alone.

And beſides this, he ſays, you may ſee admitted by the opinion of the court, 13 *H.* 7. that if a man in the night ſeaſon, haunt a houſe that is ſuſpected for bawdry, or uſe ſuſpicious company, then may the conſtable arreſt him to find ſurety for his good abearing; for bawdry is not merely a ſpiritual offence, but mixed, and ſounding ſomewhat againſt the peace of the land.

And therefore (ſays he) it ſhall not be amiſs at this day, in my ſlender opinion, to grant ſurety of the good abearing, againſt him that is ſuſpected to have begotten a baſtard child, to the end that he may be forthcoming when it ſhall be born; for otherwiſe there will be no putative father found, when the juſtices ſhall

after

after the birth come to take order for his punishment. *Lamb.* 115. —119.

11. In the next place, Mr. *Pulton*, who lived about the same time with *Lambard*, writeth thus; The surety of the good abearing is ordained for the preservation of the peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may sooner slide into the peril and danger of it. The surety of good abearing is most commonly granted in open sessions, or by two or three justices; or, upon a *supplicavit*, and great cause shewed and proved, it is granted in the chancery or king's bench. And tho' one justice alone may grant it if he will, yet it is seldom done so, unless it be to prevent some great, sudden, and imminent enormity or danger. The surety of the peace is most times taken at the request of one for the preservation of the peace chiefly against one. But the surety of the good abearing is oftentimes granted at the suit of divers, and those must be men of credit, and to provide for the safety of many; for the effect and purport thereof is, that the party bound shall demean himself well in his port, behaviour, and company, and do nothing that may be the cause of breach of the peace, or in putting the people in fear or trouble: And it is chiefly granted against common barrators, common rioters, common quarrellors, common peace breakers, and persons greatly defamed for resorting to houses suspected to maintain incontinency or adultery, and against those that be generally feared to be robbers or spoilers of the king's people, or which do endamage, disturb, trouble, or put in peril passengers by the way. *Pult.* 18.

12. Afterwards Mr. *Dalton*, who wrote towards the latter end of King *James* the first his reign, says, The surety of the good behaviour is of great affinity with that of the peace, and is provided chiefly for the preservation of the peace; and that it is most commonly granted either in the open sessions, or by two or three justices out of sessions. Yet by the words of the commission, as also by the common opinion of the learned, one justice alone, out of sessions, may grant this surety of the good behaviour. But this is not usual, unless it be to prevent some great and sudden danger; especially against a man that is of any good estate, carriage or report. And it shall be good discretion in the justices, that they do not grant it, but either upon sufficient cause seen to themselves, or upon the suit and complaint of others, and the same very honest and credible persons. *Dalt. c.* 123.

13. In the next place, Mr. *Hawkins*, who wrote in the reign of K. *George* the first, saith thus: There seem to have been some opinions, that the statute, speaking of those that be *not of good fame*, means only such as are defamed, and justly suspected, that they intend to break the peace, and that it doth not any way extend to those who are guilty of other misbehaviours not relating to the peace. But this seems much too narrow a construction; since the abovementioned expression of persons of *evil fame*, in common understanding, as properly includes persons of scandalous behaviour in other respects, as those who by their quarrelsome

behaviour

behaviour give just suspicion of their readiness to break the peace; and accordingly it seems always to have been the better opinion, that a man may be bound to his good behaviour for many causes of scandal, which give him a bad fame, as being contrary to good manners only; as for haunting bawdy houses with women of bad fame; or for keeping bad women in his own house; or for speaking words of contempt of an inferior magistrate, as a justice of the peace, or mayor, tho' he be not then in the actual execution of his office; or of an inferior officer of justice, as a constable, and such like, being in the actual execution of his office.

However it seems the better opinion, that no one ought to be bound to the good behaviour, for any rash, quarrelsome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalize the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems, that he who barely calls another rogue, or rascal, or teller of lies, or drunkard, ought not for such cause to be bound to the good behaviour.

However, says he, I cannot find any certain precise rules, for the direction of the magistrate in this respect; and therefore am inclined to think, that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day, and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected to be robbers, and the like; and of eves droppers; and common drunkards; and all other persons, whose misbehaviour may reasonably be intended to bring them within the meaning of the statute, as persons of evil fame, who, being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must shew the cause with convenient certainty. 1 *Haw.* 132.

14. And thus the sense of the statute hath been extended, not only to offences immediately relating to the peace, but to divers misbehaviours not directly tending to a breach of the peace; insomuch as it is become difficult to define how far it shall extend, and where it shall stop.

Mr. *Dalton*, in order to determine the same with some kind of certainty, hath (notwithstanding his opinion as abovementioned) inserted a number of instances, wherein sureties of the good behaviour may be granted; and they are these that follow:

(1) Against rioters.

(2) Barators.

(3) Common quarrellors, and common breakers of the peace.

(4) Such as lie in wait to rob, or shall be suspected to lie in wait to rob, or shall assault, or attempt to rob another, or shall put passengers in fear or peril; or shall be generally suspected to be robbers by the highway.

(5) Such as are like to commit murder, homicide, or other grievances, to any of the king's subjects in their bodies.

(6) Such as ſhall practiſe to poiſon another: one inſtance of which may be the poiſoning their food; thus Mr. *Dalton* granted the good behaviour againſt one who had bought ratſbane, and mingled it with corn, and then caſt it amongſt his neighbour's fowls, whereby moſt of them died.

(7) Such as in the preſence or hearing of the juſtice, ſhall miſbehave himſelf in ſome outrageous manner of force or fraud.

(8) Such as are greatly defamed for reſorting to houſes ſuſpected to maintain adultery, or incontinency.

(9) Maintainers of houſes commonly ſuſpected to be houſes of common bawdry.

(10) Common whoremongers and common whores; for bawdry is an offence temporal as well as ſpiritual, and is againſt the peace of the land.

(11) Night walkers, that ſhall eves-drop mens houſes, or ſhall caſt mens gates, carts, or the like, into ponds, or commit other outrages and miſdemeanors in the night, or ſhall be ſuſpected to be pilferers, or otherwiſe like to diſturb the peace, or that be perſons of ill behaviour, or of evil fame or report generally, or that ſhall keep company with any ſuch, or with any other ſuſpicious perſon in the night.

(12) Suſpected perſons who live idly, and yet fare well, or are well apparelled; having nothing whereon to live; unleſs upon examination they ſhall give a good account of ſuch their living.

(13) Common gameſters, eſpecially if they have not whereon to live.

(14) Such as raiſe hue and cry without cauſe.

(15) Libellers.

(16) Putative father of a baſtard child.

(17) Such as perſuade or procure the putative father to run away, or the mother to be conveyed away, whereby ſhe leaveth her child to the charge of the town.

(18) Such as abuſe a juſtice's warrant, or ſhall abuſe him or the conſtable in executing their office. Nay, it ſeemeth (he ſays) that he who ſhall uſe words of contempt, or contrary to good manners, againſt a juſtice of the peace, tho' it be not at ſuch a time as he is executing his office, yet he ſhall be bound to his good behaviour.

(19) Such as charge another before a juſtice with felony, riot, or forcible entry, and yet will not proſecute or give evidence.

(20) In general, whatſoever act or thing is of it ſelf a miſbehaviour, is cauſe ſufficient to bind ſuch an offender to the good behaviour. *Dalt. c.* 124.

To which others have added other inſtances: As,

(21) Forcible entry. 1 *Haw.* 124.

(22) Mr. *Hawkins* ſays, that he hath heard it agreed in the court of king's bench, that a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law; yet it ſeems, he ſays, that the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame. 1 *Haw.* 195.

(23) A man did beat a woman in *Westminsterhall*, and he was bound to the good behaviour; and so (says Mr. *Crompton*) he may be bound to the peace or good behaviour, where he striketh a person in the presence of the justices in sessions. *Crom.* 124.

(24) A man was bound to the good behaviour by the court of king's bench, for assaulting and threatning a person so, that he could not attend the court in a suit there, without great cost. And so it seemeth that it may be done, where one cometh to the sessions about a traverse to be tried there, or to prefer a bill of indictment, if he be assaulted or threatned. *Crom.* 125.

15. I have omitted to make any remarks in the progress of these authorities, being willing to exhibit them together in one view; I proceed now to take notice of such observations as do occur upon the whole.

First, It appears from hence, that the universal practice of one justice binding to the good behaviour, is but of a modern date; altho' the law for it is the same now, that it was near 400 years ago: and that it was a long time doubted, whether one justice alone could require sureties of the good behaviour. But here a distinction ought to be made, between the power given by the commission of the peace, and the power given by the abovementioned statute: As to the commission, there seemeth to be no foundation for any doubt, but that thereby one justice alone may require such sureties; for the words are express, *we have assigned you, jointly and severally, and every one of you*; but then that extends only to two instances, namely, to *the threatning of a person concerning his body, or the firing of his house*. As to the statute, the doubt seems to have arisen upon this; in that having appointed who shall be assigned for justices, it then directeth, that *They shall have power to restrain offenders*; and it is holden, as Mr. *Lambard* hath observed, that if no power be expressly given by any statute to any one justice alone, he cannot otherwise compel the observation thereof, than by the help of his fellow justices. And Mr. *Hawkins* speaking hereof in the case of riots, says, that if one justice alone, proceeding upon this statute, shall arrest *an innocent person* as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself; because no one single justice is by this statute made a judge of the said offence: Yet nevertheless, he says, by a favourable construction which this statute hath received for the advancement of justice, it hath been resolved, that any one justice, upon this statute, *if he finds the persons riotously assembled*, may, without staying for his companions, arrest the offenders, and bind them to their good behaviour.

Secondly, It seemeth from what hath been rehearsed, that the words, *not of good fame*, were generally understood for a long time, to refer to such offences only, as have a relation to the peace, and not to other things which concern not the peace.

Thirdly, That one great in-let to the larger, and at length almost unlimited interpretation of the words, was the case abovementioned 13 *H.* 7. wherein it was adjudged to be lawful to arrest a man for the good behaviour, for frequenting a suspected bawdy

houſe, with women of bad ſame. And this is the reaſon which Mr. *Dalton* gives for many of his inſtances above ſpecified, namely, that they are more properly againſt the peace, than this ſame caſe of avowtry.

Fourthly, That when once the gap was opened for the admiſſion of other offences not immediately relating to the peace, they flowed in and multiplied. Thus, in the caſe of baſtardy, having ſome affinity with the other of frequenting bawdy houſes, Mr. *Lambard* thought, that with equal reaſon, the reputed father of a baſtard child might be bound to the good behaviour; and in a few years after, Mr. *Dalton* delivers it abſolutely, that he may be ſo bound.

Fifthly, That therefore the natural and received ſenſe of any ſtatute ought not to be departed from without extreme neceſſity; for that one conceſſion will make way for another, and the latter will plead for the ſame right of admiſſion as the former.

Sixthly, That notwithſtanding the aforeſaid inſtances given by Mr. *Dalton* and others, it may not be ſafe in all caſes to rely upon every one of them without diſtinction; not only becauſe it is almoſt impoſſible for any two caſes to be exactly alike in all their circumſtances, but alſo becauſe in fact divers of them at different times have been adjudged otherwiſe, and others of them have not prevailed without much difficulty and contradiction in the courts above, and perhaps were at length admitted rather from the conveniency and reaſonableneſs of the thing itſelf, and from an indulgence uſually allowed to thoſe gentlemen who ſerve their country without gain, and oftentimes with much trouble, than from any clear, poſitive, and expreſs power given to them by the commiſſion, or by the ſaid ſtatute.

Seventhly, That notwithſtanding all which hath been ſaid, perhaps the caſe before recited, concerning the frequenting of a ſuſpected bawdy houſe, will not wholly ſupport the weight which ſo many authors have laid upon it. For the queſtion, whether a juſtice of the peace had cognizance of the offence, by virtue of the commiſſion of the peace, or of the ſtatute of the 34 *Ed.* 3. was no part of the diſpute; for it was an arreſt by the conſtable *ex officio*, as a conſervator of the peace at common law, and without any warrant from a magiſtrate: And the queſtion was not, whether the conſtable might require ſureties for the good behaviour, as a thing different from ſureties for the peace, but whether in that caſe he could arreſt at all or not.

And if the authority of this caſe ſhall be abated, ſeveral of the abovementioned inſtances will abate in proportion.

Eighthly, It is to be obſerved, that others of the aboveſaid inſtances, were eſtabliſhed upon matters originally determined in the court of king's bench, and Mr. *Crompton* himſelf doth refer to the authority and practice of that court in ſeveral inſtances. *Crom.* 120. But it doth by no means follow from what the juſtices of the court of king's bench may do, that juſtices of the peace may do the like; for their authority is circumſcribed and limited by their commiſſion and the ſtatute law.

Ninthly,

Ninthly, That it will perhaps abate ſome other of the foregoing inſtances, if we attend to this conſideration; that there is a great difference between what the juſtices in ſeſſions may do, after conviction by a jury, for an offence committed, and what a ſingle juſtice out of the ſeſſions may do, before an offence is committed, and to prevent the ſame from being committed; or what a ſingle juſtice may no, upon a ſummary conviction before him, for an offence, as directed by ſome ſpecial act of parliament. The truth is, binding to the good behaviour was a diſcretionary judgment at the common law, given by a court of record, for an offence at the ſuit of the king, after a common law conviction by verdict of twelve men. Trial by his peers is the *Engliſhman*'s birthright by the great charter, and cannot be taken away but by an authority equal to that which eſtabliſhed it, that is, by act of parliament; and therefore where an act gives a ſummary conviction before a juſtice of the peace, and inflicts a puniſhment upon ſuch conviction, ſuch ſtatute muſt be purſued both as to the conviction and puniſhment: And it ſeemeth incongruous, that a juſtice of the peace ſhall have power to bind a man to the good behaviour, for an offence which he himſelf hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not, and cannot legally appear to him, that the perſon is guilty.

Tenthly, That therefore upon the whole it may be proper to conclude, that the magiſtrate in this article of the good behaviour, cannot exerciſe too much caution and good adviſement; that in matters which the law hath left indefinite, it is better to fall ſhort of, than to exceed his commiſſion and authority; that to bind a man to the good behaviour upon the ſtatute for *evil fame* in general, may not always be with ſafety; not only becauſe upon an action brought it may be hard to prove ſuch evil fame, but alſo becauſe in fact it is not always true, for many a good man hath been evil ſpoken of: That altho' in ſome caſes, a juſtice of the peace may have a *diſcretionary* power (as Mr. *Hawkins* expreſſeth it), yet he muſt remember withal, that it is a *legal* diſcretion, as Mr. *Barlow* terms it, in which in favour of liberty great tenderneſs is to be uſed; or, as Lord *Coke* hath defined it, diſcretion is a knowledge or underſtanding to diſcern between truth and falſhood, between right and wrong, between ſhadows and ſubſtance, between equity and colourable gloſſes and pretences, and not to do according to our wills and private affections; and ſuch diſcretion ought to be limited and bounded with the rules of reaſon, law, and juſtice. 5 *Co.* 100. 10 *Co.* 140.

II. For what it ſhall be forfeited.

1. This hath been handled in part as it fell in with the former ſection: And agreeably to the doctrine there laid down, Mr. *Dalton* ſays, that he who is bound to the good behaviour ought to demean himſelf well in his carriage and in his company, not doing any thing which ſhall be a cauſe of breach of the peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of

all things which concern the peace, but not in misdoing of other things which touch not the pence. *Dalt. c.* 122.

2. And Mr. *Hawkins* saith, It hath been laid down as a general rule, that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it; but this hath since been denied, and indeed seems by no means to be maintainable, because the statute in ordering persons of evil fame to be bound in this manner, seems in many places chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do; and in that respect requires them to secure the publick from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognizance, who yet may justly be compellable to give one, as those who keep supicious company, or those who spend much money idly, without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, and the like. 1 *Haw.* 132, 133.

3. However it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others, for which such a recognizance cannot be forfeited; as for going armed with great numbers, to the terror of the people, or speaking words tending to sedition; and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may never actually happen. 1 *Haw.* 133.

Warrant for the peace, or good behaviour, in the king's majesty's name.

Westmorland. GEORGE *the second, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth: To our sheriff of the county of* Westmorland, *to the constable of the hundred of* ——— *in the said county, to the petty constables of the town of* ——— *in the said county, and to all and singular our bailiffs and other ministers in the said county, as well within liberties as without, greeting.*

Forasmuch as A. I. *of* ——— *in the said county, yeoman, hath personally come before Sir* George Dalston, *baronet, one of our justices assigned to keep the peace within the said county, and hath taken a corporal oath, that he the said* A. I. *is afraid that* A. O. *of* ——— *in the said county, yeoman, will beat* [*wound, maim, or kill*] *him the said* A. I. *and hath therewithal prayed surety of the peace against him the said* A. O. [Or, if for the good behaviour, ——— *hath taken a corporal oath, that* A. O. *of* ——— *in the said county, yeoman, hath threatned to beat him the said* A. I. *or, to burn the house of him the said* A. I. *and hath therewithal prayed surety of the good behaviour against him the said* A. O.] *Therefore we command and charge you, jointly and severally, that immediately upon the receipt hereof you bring the said* A. O. *before the said Sir*

George

George Dalſton, *to find ſufficient ſurety and mainpriſe, as well for his perſonal appearance at the next general quarter ſeſſions of our peace, to be holden at* Appleby, *or elſewhere, in and for the ſaid county, as alſo for our peace in the mean time to be kept towards us and all our liege people, and chiefly towards the ſaid* A. I. *that is to ſay, that he the ſaid* A. O. *ſhall not do, nor by any means procure or cauſe to be done, any of the ſaid evils, to any of our ſaid people, and eſpecially to the ſaid* A. I. [Or, if for the good behaviour, ——— *as alſo for his good behaviour in the mean time, towards us and all our liege people, and eſpecially towards him the ſaid* A. I.] *Witneſs the ſaid Sir* George Dalſton *at* Smardale *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of our reign.*

If the juſtice ſhall think fit that he ſhall be carried immediately to gaol, for default of ſureties, without being brought before him, or any other juſtice, this clauſe may be inſerted, *viz.* ——— *and eſpecially towards him the ſaid* A. I. *And if he the ſaid* A. O. *ſhall refuſe ſo to do, that then immediately, without expecting any further warrant, you him ſafely convey, or cauſe to be ſafely conveyed, to our common gaol in the ſaid county* (or, *to the houſe of correction at* ——— *in the ſaid county), there to remain until he ſhall willingly do the ſame: So that he may be before our ſaid juſtices at the ſaid next general quarter ſeſſions of our peace, then and there to anſwer unto us for his contempt in this behalf. And ſee that you certify your doings in the premiſſes, to our ſaid juſtices at the ſaid ſeſſions, bringing then thither this precept with you.*

Warrant for the peace, or good behaviour, in the name of the juſtice himſelf.

Weſtmorland. SIR William Fleming, *baronet, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, To the ſheriff of the ſaid county, to the high conſtable of* ——— *in the ſaid county, to the petty conſtables of* ——— *in the ſaid county, and to all other the miniſters and officers of our ſaid lord the king, within the ſaid county, and to every of them, greeting.*

Foraſmuch as A. I. *of* ——— *in the ſaid county, yeoman, hath perſonally come before me, and hath taken a corporal oath, that he the ſaid* A. I. *is afraid that* A. O. *of* ——— *in the ſaid county, yeoman, will beat him (wound, main, kill, or do to him ſome bodily hurt) and hath therefore prayed ſurety of the peace againſt him the ſaid* A. O. [Or, if for the good behaviour, *That* A. O. *of* ——— *in the ſaid county, yeoman, hath threatned to do ſome bodily hurt to him the ſaid* A. I. *or, to burn the houſe of him the ſaid* A. I. *and hath therefore prayed ſurety of the good behaviour againſt him the ſaid* A. O.] *Theſe are therefore on the behalf, and in the name of our ſaid lord the king, to command you jointly and ſeverally, that immediately upon the receipt hereof you bring the ſaid* A. O. *before me, to find ſurety as well for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden at* Kirkby *in* Kendale *in and for the ſaid county, as alſo for his keeping the peace* [Or,

for his being of the good behaviour] *in the mean time towards the king and all his liege people, and chiefly towards the said* A. I. *Given under my seal at* Ridale *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the second, of* Great Britain, France, *and* Ireland, *king.*

Or the warrant may be directed to any of these officers above-named, particularly; or to any other indifferent person or persons, as followeth:

Another warrant for the peace, or good behaviour.

Westmorland. { To the constables of the town of ——— in the said county, and to either of them.

FORASMUCH *as* A. I. *the wife of* B. I. *of your said town, labourer, hath required sureties of the peace* [or, *of the good behaviour*] *before me* Daniel Wilson, *esquire, one of the justices of our lord the king assigned to keep the peace within the said county, against* A. O. *of your said town, butcher, and withal hath taken her corporal oath before me, that she requireth the same not for any private malice, hatred, or evil will, but simply that she is afraid that he the said* A. O. *will do to her some bodily mischief* [or as the case shall be: And if it is for the good behaviour, then add, ——— *and that he the said* A. O. *hath threatned to do some bodily mischief to her the said* A. I. *or to burn her houses*] *These are therefore in the name of our said lord the king to charge and command you, that immediately upon sight hereof, you or one of you do bring the said* A. O. *before me to find sufficient sureties, as well for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, as also that he the said* A. O. *shall in the mean time keep the peace* [Or, *be of the good behaviour*] *as well towards our said lord the king, as towards all his liege people, and especially towards the said* A. I. *Dated at* Dallam Tower *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the second, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth.*

Another warrant for the peace, or good behaviour.

Westmorland. { To the constable of ——— in the said county.

FORASMUCH *as* A. I. *of* ——— *aforesaid in the county aforesaid, yeoman, hath personally come before me* Thomas Shepherd, *esquire, one of the justices of our lord the king assigned to keep the peace within the said county, and hath taken his corporal oath, that* A. O. *of* ——— *aforesaid in the county aforesaid, yeoman, hath assaulted, beaten, and wounded him the said* A. I. *and farther hath threatned him concerning his body, insomuch that he the said* A. I. *is afraid that the said* A. O. *will beat, wound, maim, or kill him the said* A. I. *or do to him some other bodily harm; and*

thereupon

thereupon he the said A. I. *hath prayed security of the peace,* [or, *of the good behaviour*] *to be had or granted to him against the said* A. O. *These are therefore to require you in the name of our said lord the king, immediately upon the sight hereof to bring the said* A. O. *before me, to find sufficient sureties for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, then and there to answer the premisses, and in the mean time that he the said* A. O. *keep the peace,* [or, *shall be of the good behaviour,*] *towards our said lord the king, and all his liege people, and especially towards the said* A. I. *Given under my hand and seal at* Kirkby *in* Kendale *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the second, of* Great Britain, France, *and* Ireland, *king.*

Note; The warrants above set forth, so far as they concern the good behaviour, are framed upon the clause in the commission, impowering one justice to bind to the good behaviour certain offenders therein mentioned. The following warrant for the good behaviour simply, as contradistinguished from the peace, is formed on the statute of the 34 *Ed.* 3. so often abovementioned.

Warrant for the good behaviour, on the 34 *Ed.* 3. *c.* 1. from *Lambard* and *Dalton.*

Westmorland. WIlliams Winder, *esquire, and* Richard Honeywood, *esquire, justices of our lord the king, assigned to keep the peace within the said county, To the sheriff of the said county, to the constable of the hundred of* ——— *in the said county, to the petty constables of the town of* ——— *in the said county, and to all and singular bailiffs, constables, and other officers of our said lord the king, as well within liberties as without, in the same county, greeting.*

Forasmuch as we are given to understand, by the information, testimony, and complaint of many credible persons, that A. O. *of* ——— *in the county aforesaid, gentleman, and* B. O. *of the same, yeoman, are not of good name and fame, nor of honest conversation, but evil doers, rioters, barrators, and disturbers of the peace of our said lord the king, so that murder, homicide, strifes, discords, and other grievances and damages amongst the lieges of our said lord the king concerning their bodies are likely to arise thereby; Therefore on the behalf of our said lord the king, we command you, and every of you, that you omit not by reason of any liberty within the county aforesaid, but that you attach, or one of you do attach the aforesaid* A. O. *and* B. O. *so that you have them before us or others our fellows, justices of our said lord the king assigned to keep the peace within the county aforesaid, as soon as they can be taken* [or, *before the justices of our said lord the king, assigned to keep the peace within the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the next general quarter sessions of the peace to be holden in and for the said county*] *to find then before us* (*or the said justices*) *sufficient*

sufficient surety and mainprise for their good behaviour towards our said lord the king, and all his people, according to the form of the statute in such case made and provided. And this you shall in no wise omit, on the peril that shall ensue thereon. And have you before us, or before the said justices [at the sessions aforesaid] this precept. Given under our seals at Dufton *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* ———.

Recognizance for the peace or good behaviour.

Westmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our lord* George *the second, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth,* A. O. *of* ——— *in the county aforesaid, yeoman,* A. S. *of the same place, yeoman, and* B. S. *of the same place, yeoman, came before me* Thomas Carleton, *esquire, one of the justices of our said lord the king, assigned to keep the peace within the said county, and acknowledged themselves to owe to our said lord the king, to wit, the said* A. O. *the sum of* 20l. *the said* A. S. *the sum of* 10l. *and the said* B. S. *the sum of* 10l. *of good and lawful money of* Great Britain, *to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. O. *shall fail in performing the condition indorsed* [or *underwritten*].

Acknowledged before me Thomas Carleton.

The condition of this recognizance is such, that if the within bounden [or, *above bounden*] A. O. *shall personally appear at the next general quarter sessions of the peace to be holden in and for the county aforesaid, to do and receive what shall then and there be injoined him by the court, and in the mean time shall keep the peace,* [or, *be of the good behaviour,* or, *shall keep the peace and be of the good behaviour*] *towards the king and all his liege people, and especially towards* A. I. *of* ——— *in the said county, yeoman; Then the said recognizance shall be void, or else remain in its force.*

Mittimus for want of sureties.

Westmorland. { To the constable of ——— and to the keeper of ——— in the said county.

WHEREAS A. O. *of* ——— *in the said county, yeoman, is now brought before me* John Dalston, *esquire, one of the justices of our lord the king assigned to keep the peace in and for the said county, requiring him to find sufficient sureties to be bound with him in a recognizance for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, and in the mean time to keep the peace* [or, *be of the good behaviour*] *towards our said lord the king, and all his liege people, and especially towards* A. I. *of* ——— *in the said county, yeoman; and*

whereas

whereas he the said A. O. *hath refused and doth now refuse before me to find such sureties: These are therefore in the name of our said lord the king, to command you the said constable, forthwith to convey the said* A. O. *to the common gaol of our said lord the king* [or, *to the house of correction*] *at* ——— *in the said county, and to deliver him to the keeper thereof there, together with this precept: And I do, in the name of our said lord the king, hereby command you the said keeper, to receive the said* A. O. *into your custody in the said gaol* [or, *house of correction*] *and him there safely to keep, until he shall find such sureties as aforesaid. Given under my hand and seal, at* Acorn Bank *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the second of* Great Britain, France, *and* Ireland, *king.*

The form of a *supersedeas.*

Westmorland. ROGER Wilson, *esquire, one of the justices of our lord the king, assigned to keep the peace within the county aforesaid, To the sheriff, bailiff, constables, and other the faithful ministers and subjects of our said lord the king within the said county, and to every of them, greeting.*

Forasmuch as A. O. *of* ——— *in the said county, yeoman, hath personally come before me at* Casterton *in the said county, and hath found sufficient surety, that is to say,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of the which hath undertaken for the said* A. O. *under the pain of* 20l. *and he the said* A. O. *hath undertaken for himself under the pain of* 40l. *that he the said* A. O. *shall personally appear at the next general quarter sessions of the peace to be holden in and for the said county, then and there to do and receive what shall be injoined him by the said court, and in the mean time shall well and truly keep the peace* [or, *be of the good behaviour*] *towards our said lord the king, and all his liege people, and especially towards* A. I. *of* ——— *yeoman; Therefore on the behalf of our said lord the king I do command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means for the said cause to molest the said* A. O. *and if you have, for the said occasion, and for none other, taken or imprisoned him the said* A. O. *that then him you deliver, or cause to be delivered and set at liberty, without further delay. Given at* Casterton *aforesaid, in the county aforesaid, under my seal, this* ——— *day of* ——— *in the* ——— *year of the reign of* ———

This *supersedeas* may be also in the name of the king, under the teste of the justice, thus;

GEORGE *the second by the grace of god* &c. *To the sheriff* &c. *greeting: Forasmuch as* A. O. *hath come before* Edward Wilson, *esquire, one of our justices assigned to keep the peace within our said county, and hath found* &c. *We therefore command you, and every of you, that ye forbear* &c. *Witness the said* Edward Wilson

Wilſon *at* Dallam Tower *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of our reign.*

Releaſe of the ſurety for the peace, or good behaviour.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of* ——— *the aforeſaid* A. I. *hath come before me the ſaid* Fletcher Fleming, *eſquire, and freely remiſed and releaſed, as much as in him lieth, the aforeſaid ſecurity of the peace* [or, *of the good behavior*] *by him prayed before me againſt the abovenamed* A. O. *In witneſs whereof, I the ſaid* Fletcher Fleming *have hereunto ſet my ſeal. Given* &c.

This is to be written under the recognizance; and if the juſtice only ſign, without ſealing it, it is well enough, eſpecially where the recognizance is without ſeal.

Or, the releaſe may be by it ſelf, thus:

Weſtmorland. BE *it remembred, that* A. I. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *came before me* William Tatham, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, at* Aſkham *in the ſaid county, and there remiſed and freely releaſed to* A. O. *of* ——— *in the ſaid county, yeoman, the ſurety of the peace* [or, *good behaviour*] *by him the ſaid* A. I. *before me prayed againſt the ſaid* A. O. *Given* &c.

Or, if it is before another juſtice, then ſay, ——— *the ſurety of the peace* [or, *good behaviour*] *which he has againſt* A. O. *of* ——— *in the ſaid county, yeoman. Given* &c.

But note, that none of theſe releaſes will diſcharge the recognizance, or the appearance of the party bound thereby; but that he muſt appear according to the condition of the recognizance, for the ſafeguard of his recognizance.

Liberate to diſcharge one committed for want of ſureties.

Weſtmorland. STanwix Nevinſon, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the county aforeſaid, To the keeper of his majeſty's gaol at* ——— *in the ſaid county, greeting.*

Foraſmuch as A. O. *in the priſon of our ſaid lord the king, in your cuſtody now being, at the ſuit of* A. I. *of* ——— *in the ſaid county, yeoman, for the want of his finding ſufficient ſureties for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, and for his keeping the peace*

peace [or, *being of the good behaviour*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I. *hath found before me sufficient sureties, to wit,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of which hath undertaken for the said* A. O. *under the pain of* 20l. *and he the said* A. O. *hath undertaken for himself under the pain of* 40l. *that he the said* A. O. *shall and will personally appear at the next general quarter sessions of the peace to be holden in and for the said county, and shall well and truly keep the peace* [or, *be of the good behaviour*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I. *Therefore on the behalf of our said lord the king I do command you, that if the said* A. O. *do remain in the said gaol, for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that, upon the pain that will fall thereon. Given under my seal, at* Newby Hall *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the second, of* Great Britain, France, *and* Ireland, *king.*

Surgeons. See Physicians.
Suspicion. See Arrest, Warrant.
Swans. See Game.

Swearing.

1. BY the canons of the church, If any offend their brethren by swearing, the churchwardens shall present them; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. *Can.* 109. Punishment in the spiritual court.

And by the statute of the 19 *G.* 2. *c.* 21. It is enacted as follows:

2. If any person shall profanely curse or swear, and be thereof convicted on confession, or oath of one witness, before one justice (or mayor), he shall forfeit as follows: That is to say, Pecuniary penalty.

Every day labourer, common soldier or common seaman, 1 *s.*

Every other person, under the degree of a gentleman, 2 *s.*

And every person of or above the degree of a gentleman, 5 *s.*

And for a second offence after conviction, double; and for every other offence after a second conviction, treble. *s.* 1.

Which said penalties shall go to the poor of the parish where the offence was committed. *s.* 10.

3. If such person shall curse or swear in the presence and hearing of a justice (or mayor); he shall convict him without other proof. *s.* 2. Swearing in presence of a justice.

4. If in the presence and hearing of a constable, if he is *unknown* to such constable, the said constable shall seize and carry In presence of a constable.

him

him forthwith before the *next* juſtice (or mayor of a town corporate), who ſhall convict him upon the oath of ſuch conſtable;

If he is *known* to ſuch conſtable, he ſhall ſpeedily make information before ſome juſtice (or mayor) in order that he may be convicted. *ſ.* 3.

In preſence of any other.

5. So that the conſtable, if it is in his hearing, is required to proſecute; but any other perſon alſo may proſecute, if he pleaſes.

Commitment on not paying the penalty.

6. And ſuch juſtice (or mayor) ſhall immediately on ſuch information on the oath of any conſtable, or of any other perſon, cauſe the offender to appear before him; and on proof of ſuch information, convict him: and if he ſhall not immediately pay down the penalty, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may commit him to the houſe of correction, to be kept to hard labour for ten days. *ſ.* 4.

On not paying the charges.

7. Alſo the charges of the information and conviction, ſhall be paid by the offender, if able, over and above the penalties; which charges ſhall be aſcertained by ſuch juſtice (or mayor). *ſ.* 11.

But for the information, ſummons, and conviction, no more ſhall be paid to the juſtice's clerk, than 1*s.* *ſ.* 15.

And if he ſhall not immediately pay ſuch charges, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may commit him to the houſe of correction, to be kept to hard labour for ſix days, over and above ſuch time for which he may be committed for non-payment of the penalties; and in ſuch caſe, no charges of information and conviction ſhall be paid by any perſon. *ſ.* 11.

Soldier or ſeaman.

8. But if ſuch ſoldier or ſeaman ſhall not ſo pay or ſecure the penalty, and alſo the coſts of the information, ſummons, and conviction; he ſhall, inſtead of being committed to the houſe of correction, be ordered to be publickly ſet in the ſtocks for one hour for every ſingle offence, and for any number of offences whereof he ſhall be convicted at one and the ſame time two hours. *ſ.* 5.

Form of the conviction.

9. The conviction ſhall be in the words and form following;

Be it remembred, that on the ——— *day of* ——— *in the* ——— *year of his majeſty's reign,* A. B. *was convicted before me (one of his majeſty's juſtices of the peace for the county, riding, diviſion, or liberty aforeſaid; or before me* ——— *mayor of the city or town of* ——— *within the county of* ———) *of ſwearing one or more profane oath or oaths, or of curſing one or more profane curſe or curſes. Given under my hand and ſeal the day and year aforeſaid.* ſ. 8.

Certiorari.

10. Which conviction ſhall not be removed by *certiorari.* *ſ.* 9.

Conviction to be filed.

11. And the juſtice (or mayor) ſhall cauſe the conviction to be fairly wrote over upon parchment, and returned to the next general or quarter ſeſſions, to be filed by the clerk of the peace, and kept amongſt the records. *ſ.* 9.

12. If

12. If any juſtice (or mayor) ſhall omit his duty, in the execution of this act, he ſhall forfeit 5 *l.* half to the poor where he ſhall reſide, and half to him that ſhall ſue in any court of record. *ſ.* 6. Penalty on a juſtice omitting his duty.

13. Conſtable omitting his duty, ſhall on conviction, on oath of one witneſs, before one juſtice (or mayor), forfeit 40 *s.* to be levied by diſtreſs, half to the informer, and half to the poor; and if he have not ſufficient goods whereon to levy, ſuch juſtice (or mayor) may commit him to the houſe of correction, to be kept to hard labour for one month. *ſ.* 7. Penalty on the conſtable.

14. And this act ſhall be publickly read four times in the year, in all churches and chapels, by the miniſter, immediately after morning or evening prayer, on the *Sundays* next after *Mar.* 25. *June* 24. *Sep.* 29. and *Dec.* 25. on pain of 5 *l.* for every offence, to be levied by diſtreſs, by warrant of a juſtice (or mayor). *ſ.* 14. Act to be read in the church.

15. But no perſon ſhall be proſecuted for any offence againſt this act, unleſs it be within 8 days after the offence committed. *ſ.* 13. Limitation of actions.

16. By the 22 *G.* 2. *c.* 33. Perſons belonging to his majeſty's ſhips of war, guilty of profane oaths or curſes, ſhall incur ſuch puniſhment as a court martial ſhall impoſe. Navy.

Information.

Weſtmorland. THE *information of* A. I. *of* ——— *in the county aforeſaid, yeoman, made on oath this* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county: Who ſaith,*

That on ——— *the* ——— *day of* ——— *now laſt paſt, at* ——— *in the pariſh of* ——— *in the county aforeſaid, he heard* A. O. *of* ——— *in the ſaid county, yeoman, ſwear one profane oath* [or, *curſe one profane curſe*] *in theſe words, to wit,* &c.

Summons.

Weſtmorland { To the conſtable of———

WHEREAS *information hath this day been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, upon the oath of* A. I. *of* ——— *yeoman, that on* ——— *the* ——— *day of this preſent month of* ——— *he heard* A. O. *of* ——— *in the ſaid county, yeoman, at* ——— *in the pariſh of* ——— *in the ſaid county, ſwear one profane oath* [or, *curſe one profane curſe*] *Theſe are therefore to command you to cauſe the ſaid* A. O. *forthwith to appear before me to anſwer the premiſſes, and to be further dealt withal according to law. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of* ———

Commit-

Commitment.

Westmorland. { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS A. O. *of* ——— *in the said county, day labourer, is and stands convicted this day, before me* ——— *one of his majesty's justices of the peace for the said county, of swearing one profane oath, on the* ——— *day of this present month of* ——— *at* ——— *in the parish of* ——— *in the said county, whereby he hath forfeited the sum of* 1 s. *to the poor of the said parish of* ——— *And whereas the said* A. O. *hath refused and doth refuse to pay down the said sum of* 1 s. *for the use of the poor aforesaid, and also hath refused, and doth refuse to give satisfactory security to pay the same; These are therefore to require you the said constable to convey the said* A. O. *to the house of correction at* ——— *aforesaid, and to deliver him to the keeper thereof together with this warrant: And I do hereby command you the said keeper to recive him the said* A. O. *into your custody in the said house of correction, and there to detain and keep him to hard labour for the space of ten days. And for so doing this shall be your sufficient warrant. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

If he also refuseth to pay the charges, these words may be added ——— *satisfactory security to pay the same; And whereas the said* A. O. *hath likewise refused and doth refuse to pay the sum of* 1 s. *which I have settled and ascertained as and for the charges of the proceedings against him touching the premisses, and hath refused and doth refuse to give satisfactory security to pay the same: These are therefore to require you* ——— *for the space of* 16 *days* ———

Sweets. See Excise.

Tanners. See Leather.
Taylors. See Buttons.
Tea. See Excise.
Tenant. See Distress.

Thames.

CONCERNING regulations of the navigation on the river of *Thames*, the ſame being not general, it ſhall be ſufficient only to mention the ſeveral acts touching the ſame; *viz.*

2 & 3 *P. & M. c.* 16.	2 *G.* 2. *c.* 26.
1 *J. c.* 16.	4 *G.* 2. *c.* 24.
6 & 7 *W. c.* 16.	5 *G.* 2. *c.* 20.
11 & 12 *W. c.* 21.	6 *G.* 2. *c.* 29.
4 *An. c.* 13.	10 *G.* 2. *c.* 31.
9 *An. c.* 26.	24 *G.* 2. *c.* 8.

Theft. See Larceny.
Thefthote. See Felony.
Threatning. See Surety.

Tiles.

EVERY perſon uſing the occupation of making tile, ſhall make it good, ſeaſonable, and ſufficient, and well whited and anealed. And the earth whereof it ſhall be made, ſhall be digged and caſt up before the firſt of *November*, and ſtirred and turned before the firſt of *February*, and not wrought before the firſt of *March*; and before it be put to making of tile, ſhall be truly wrought and tried from ſtones; and the veins called malin or marle, and chalk, ſhall be ſevered from the earth whereof the tile is made: And plain tile ſhall be 10 ½ inches long, 6 ½ broad, and half an inch and half a quarter thick; roof tile or creſs-tile, 13 inches long, half an inch and half a quarter thick, with convenient deepneſs; gutter tile and cover tile, 10 ½ inches long, with convenient thickneſs, breadth and deepneſs. And if any perſon ſet to ſale any tile made contrary to this ordinance, he ſhall forfeit to the buyer double value, and make fine and ranſom at the king's will. And every perſon that feeleth himſelf grieved, and will ſue, may have an action of debt againſt the offender. And the plaintiff in every ſuch action may recover his coſts. And the juſtices of the peace, and every of them, may hear and determine by their diſcretions, as well by examination as otherwiſe, offences againſt this ordinance, as well at the king's ſuit as the party's who ſhall be grieved. And if it appear to the juſtices, or any of them, that any perſon hath offended herein, then the ſame juſtices ſhall aſſeſs upon the offender no leſs fine than for every 1000 of plain tile 5 *s.* for every 100 of roof tile 6 *s.* 8 *d.* for every 100 of corner tile or gutter tile 2 *s.* And the ſaid juſtices may call before them perſons having knowledge in making

of tile, to ſearch and examine the digging, turning, parting, making, whiting, and anealing. And no perſon ſhall put to ſale any tile before it be ſearched, on pain of forfeiting the ſame. And if the ſearchers find any defaulters, they ſhall preſent them at the next ſeſſions; which preſentment ſhall be as effectual as that of 12 men. And the ſearcher ſhall have of the tile maker for his labour, for every 1000 plain tile ſearched 1 *d.* for every 100 roof tile an half penny, and for every 100 of corner tile and gutter tile a farthing. Searcher making default ſhall forfeit 10 *s.* to the king: And the juſtices may hear and determine the defaults of the ſearchers, in like manner as of the tile makers. 17 *Ed.* 4. *c.* 4.

Tin. See Pewter.

Tithes.

I. Of ſmall tithes due from any perſon.

II. Of great and ſmall tithes and other church rates and payments, due from quakers only.

III. Of contempts for tithes in the ſpiritual court.

I Of ſmall tithes due from any perſon.

THE books in general do confound the acts of the 7 & 8 *W. c.* 6. concerning ſmall tithes only, due from any perſon whatſoever (whether quaker or not being no way material); and the 7 & 8 *W. c.* 34. and 1 *G. ſ.* 2. *c.* 6. concerning quakers tithes only, great and ſmall, and their other church dues. Nevertheleſs, the acts are intirely diſtinct in themſelves, and the method of proceeding in the one caſe and in the other is different in almoſt every inſtance. I have therefore taken care to extricate them out of this confuſion, by inſerting them ſeparately, and by drawing diſtinct forms upon each, according to the different methods of proceeding.

For what tithes. 1. And firſt, as to the ſmall tithe act, 7 & 8 *W. c.* 6.——In this caſe, the proſecution muſt be for ſmall tithes only, or compoſitions for the ſame; or for offerings, oblations, or obventions: and not otherwiſe. *ſ.* 1.

And they muſt not amount to above 40 *s.* a year from any one perſon. *id.*

And they muſt have become due within two years next before the complaint. *ſ.* 6.

And they muſt not be in *London*, nor in any place where the tithes are otherwiſe ſettled by act of parliament. *ſ.* 5.

And they muſt not have been begun to be ſued for in the exchequer, or eccleſiaſtical court. *ſ.* 14.

2. Of

2. Of these demand must be first be made. *s.* 1. Demand.

3. And if any person shall fail in the payment of the same, by the space of 20 days after such demand; the person to whom the same shall be due, may make complaint in writing to two justices of the peace, neither of whom is patron of the church or chapel, nor interested in the tithes. *s.* 1. Complaint.

H. 6 *G. K.* and *Furness.* Order for non-payment of small tithes was quashed, because said only *upon complaint* generally, and the statute requires the complaint to be *in writing*. *Str.* 264.

4. Whereupon the said justices shall summon in writing under their hands and seals, by reasonable warning, every person against whom such complaint shall be made. *s.* 2. Summons.

5. And after appearance, or default of appearance (the warning or summons being proved upon oath), the said justices shall proceed to hear and determine the complaint. *s.* 2. Hearing.

6. And if on hearing the same, any person shall insist on a prescription, composition, *modus decimandi*, agreement, or title, whereby he ought to be freed from payment, and deliver the same in writing to the justices, subscribed by him, and shall then give the party complaining security to the satisfaction of the justices, to pay all such costs and damages, as upon a trial at law shall be given against him; in that case, the justices shall forbear to give judgment. *s.* 8. Pleading a modus.

7. Otherwise, they shall in writing under their hands and seals, adjudge the case; and give such compensation, as they shall judge to be just and reasonable; and also such costs and charges, not exceeding 10 *s.* as upon the merits of the cause shall appear just. Adjudication.

Also they may give costs, not exceeding 10 *s.* to the party prosecuted, if they shall find the complaint to be false and vexatious. *s.* 12.

8. Of which adjudication notice shall be given to the party complained of. *s* 3. Demand.

9. And if any person shall refuse or neglect by the space of ten days after such notice given, to pay or satisfy such sum adjudged; the constables and churchwardens, or one of them, shall by warrant under the hands and seals of the said justices, distrain his goods, and after detaining them three days (if the money, together with reasonable charges for making and detaining the distress, be not paid in the mean time) shall publickly sell the same, and pay to the party complaining the sum adjudged, retaining to themselves such reasonable charges for making and keeping the distress, as the said justices shall think fit. *s.* 3. Distress and sale.

But by the 27 *G.* 2. *c.* 20. The distress shall be detained not less than four days, nor more than eight; and the officers may deduct the charges not only of *making* and *keeping* the distress, but also of the *sale*: but then the justices cannot by the said act of the 27 *G.* 2. adjust the *quantum* of the charges of *sale*, as they may by this act the charges of *making* and *keeping* the distress.

10. And if any person against whom judgment shall be obtained, shall remove out of the county before the sum shall be levied; the justices who made the judgment, or one of them, shall certify the same under hand and seal, to any justice of such Distress out of the county.

other county, who ſhall by his warrant order the ſame to be levied in like manner. *ſ.* 10.

Appeal. 11. Any perſon aggrieved by the judgment of the two juſtices, may appeal to the next ſeſſions; and if they confirm the judgment, they ſhall decree the ſame by order of ſeſſions, and give coſts againſt the appellant, to be levied by diſtreſs, as to them ſhall ſeem juſt and reaſonable. *ſ.* 7.

Certiorari. 12. And no proceedings herein ſhall be removed by *certiorari*, or otherwiſe; unleſs the title of ſuch tithes, oblations, or obventions ſhall be in queſtion. *ſ.* 7.

Adjudication to be recorded. 13. Finally, Every perſon who ſhall obtain any judgment, or againſt whom any ſuch judgment ſhall be obtained, ſhall cauſe the ſame to be inrolled at the next ſeſſions; for which the clerk of the peace ſhall have 1 *s.* *ſ.* 9.

II. Of great or ſmall tithes, and other church rates and payments, due from quakers only.

For what tithes and dues. 1. This is upon the acts of the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6.—And the proſecution in this caſe may be, for any tithes or church rates, or any cuſtomary or other rights, dues, or payments belonging to any church or chapel, which of right by law and cuſtom ought to be paid for the ſtipend or maintenance of any miniſter or curate officiating in any church or chapel.

Provided that the ſame do not exceed the value of 10 *l.*—But no time is limited, within which the ſame ſhall become due.

Complaint. 2. And where any quaker ſhall refuſe to pay or compound for the ſame, any parſon, vicar, curate, farmer, or proprietor of ſuch tithes, or any churchwarden or chapelwarden, or other perſon who ought to have, receive, or collect, any ſuch tithes, rates, dues, or payments, may make complaint to any two juſtices, other than ſuch as is patron of the church or chapel, or any way intereſted in the tithes.

Note; here is no number of days limited, between the time of refuſal and the complaint; nor is it hereby required that ſuch complaint ſhall be in writing.

Summons. 3. Upon which complaint the ſaid juſtices ſhall ſummon in writing, under their hands and ſeals, by reaſonable warning, ſuch quaker.

Hearing. 4. And after appearance, or on default of appearance (the warning or ſummons being proved before them upon oath), they may proceed to examine on oath the truth of the complaint, and to aſcertain and ſtate what is due and payable.

Adjudication. 5. And by order under their hands and ſeals, they may direct and appoint the payment thereof; ſo as the ſum ordered (as is aforeſaid) do not exceed 10 *l.* And alſo ſuch coſts and charges, as they ſhall think reaſonable, not exceeding 10 *s.*

Diſtreſs and ſale. 6. And on refuſal to pay, it ſhall be lawful for any one of the two *next* juſtices, by warrant under his hand and ſeal, to levy the ſame by diſtreſs and ſale, rendring the overplus, the neceſſary charges of diſtraining being thereout firſt deducted and allowed by the ſaid juſtices; unleſs it be in the caſe of appeal,

mitted to the next gaol, till he shall have found sufficient sureties by recognizance or otherwise, to perform the said definitive sentence and judgment. *s.* 4.

Complaint for small tithes; on the 7 & 8 *W. c.* 6.

TO J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the county of* ——— A. I. *of* ——— *in the said county, clerk, humbly complaineth,*

That he the said complainant did by the space of 20 *days and upwards before the day of the date hereof, demand of* A. O. *of* ——— *in the parish of* ——— *in the county aforesaid, yeoman, the small tithes, offerings, oblations, and obventions, justly become due within two years now last past, from him the said* A. O. *unto him the said complainant, to the value of* 4 l. *and that he the said* A. O. *did upon the said demand refuse, and doth yet refuse, to pay or compound for, and hath not paid or compounded for the same, or any part thereof: The said complainant therefore prayeth such redress in the premisses, as to you shall seem meet, and as to the law doth appertain. Signed the* ——— *day of* ——— *in the* ——— *year of* ———.

A. I.

Summons for small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. { To the constable of ———.

WHEREAS *complaint in writing hath been made unto us* ——— *two of his majesty's justices of the peace for the said county, by* A. I. *of* ——— *in the said county, clerk, that* A. O. *of* ——— *in the parish of* ——— *in the said county, yeoman, hath for above the space of* 20 *days before the time of the said complaint so made unto us as aforesaid, refused to compound for, or to pay unto him the said* A. I. *and hath not yet compounded for, nor paid, the small tithes, offerings, oblations, and obventions, justly due from him the said* A. O. *to him the said* A. I. *These are therefore to command you forthwith, upon sight hereof, to summon the said* A. O. *to appear before us at the house of* ——— *in* ——— *in the said county, on* Saturday *the* ——— *day of this present month of* ——— *at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premisses. Given under our hands and seals, at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of* ———.

Order for payment of small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. WHEREAS *complaint in writing hath been made unto us* ——— *two of his majesty's justices of the peace for the said county, by* A. I. *vicar of the parish*

parish of ——— in the said county, that A. O. *of ——— in the said parish of ——— in the county aforesaid, yeoman, did refuse for the space of* 20 *days next before the time of the said complaint so made unto us as aforesaid, to pay or compound for his small tithes, offerings, oblations, and obventions, arising in the said parish of ——— and due to him the said* A. I. *We therefore the said justices, being neither of us patron of the parish church of ——— aforesaid, nor any ways interested in any of the said tithes, offerings, oblations, or obventions, having duly summoned the said* A. O. *before us, and having duly examined the truth and justice of the said complaint upon oath, do find that there is justly due from the said* A. O. *to the said* A. I. *the sum of* 4 l. *being the value of the said tithes, offerings, oblations, and obventions, become due within two years last past; and do therefore adjudge and order the aforesaid* A. O. *to pay or cause to be paid unto the said* A. I. *the aforesaid sum of* 4 l. *and also the sum of* 10 s. *for the costs and charges of the said* A. I. *in prosecuting the said* A. O. *for the recovery of his said just dues. Given under our hands and seals at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ———.*

Distress for small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. { To the constable of ——— in the said county, and to the churchwardens of the parish of ——— in the said county, and to every of them.

WHEREAS *upon the complaint in writing of* A. I. *vicar of the parish of ——— aforesaid, in the county aforesaid,* A. O. *of ——— in the said parish in the county aforesaid, yeoman, hath been duly summoned to appear before us ——— two of his majesty's justices of the peace for the said county, to be examined for the non-payment of his small tithes, offerings, oblations, and obventions, due unto the said* A. I. *And whereas we the said justices, being neither of us patron of the parish church of ——— aforesaid, nor any way interested in any of the said tithes, offerings, oblations, or obventions, have duly examined the truth and justice of the said complaint, and have ordered him the said* A. O. *to pay unto the said* A. I. *the sum of* 4 l. *being the value of the small tithes, offerings, oblations, and obventions become due from him the said* A. O. *to him the said* A. I. *within two years next before the said complaint so made unto us as aforesaid, together with the sum of* 10 s. *for the costs and charges of the said* A. I. *for the recovery of his said just dues; making in the whole the sum of* 4 l. 10 s. *And whereas it appeareth unto us the said justices, that the said* A. O. *had due notice of our said order for the space of ten days and upwards before the day of the date hereof, but hath refused to pay, and hath not yet paid the said sum of* 4 l. 10 s. *nor any part thereof: These are therefore to command you, jointly and severally, that you, or some, or one of you, do forthwith distrain the goods and chattels of the said* A. O. *and in case the said sum of*

of 4 l. 10 s. *together with your reasonable charges of making and detaining the said distress, be not paid or tendred to be paid by him the said* A. O. *in* [*four*] *days next after such distress made, that then you do make publick sale of the said goods and chattels so distrained as aforesaid, and out of the money arising from such sale, that you pay or cause to be paid unto him the said* A. I. *the said sum of* 4 l. 10 s. *and thereout also deduct and detain your reasonable charges of making, keeping and selling the said distress; and if any overplus shall remain, after such payment and deduction as aforesaid, that then you do render the same unto him the said* A. O. *upon demand. Given under our hands and seals at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year* ———.

Summons of a quaker for tithes; on the 7 & 8 *W. c.* 34. and 1 *G. st.* 2. *c.* 6.

Westmorland. { To the constable of ——— in the said county.

WHEREAS A. I. *clerk, rector of the parish church of* ——— *in the said county, hath complained unto us* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, that* A. O. *of* ——— *in the parish of* ——— *aforesaid, in the county aforesaid, yeoman, being a person commonly called a quaker, hath refused to pay unto him the said* A. I. *or to compound for the tithes, and other rights, dues, and payments belonging to the church of* ——— *aforesaid, and justly due to him the said* A. I. *from him the said* A. O. *These are therefore to require you forthwith to summon the said* A. O. *to appear before us at the house of* ——— *in* ——— *in the said county, on* Saturday *the* ——— *day of this present month of* ——— *at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premisses. Given under our hands and seals at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Order for quakers tithes; on the 7 & 8 *W. c.* 34. and 1 *G. st.* 2. *c.* 6.

Westmorland. WHEREAS *complaint hath been made unto us* ——— *two of his majesty's justices of the peace for the said county, by* A. I. *vicar of the parish of* ——— *in the said county, that* A. O. *of the parish of* ——— *aforesaid in the county aforesaid, being a person commonly called a quaker, hath refused to pay to, or to compound with him the said* A. I. *for his tithes, and other rights, dues, and payments, belonging to the church of* ——— *aforesaid, and justly due unto him the said* A. I. *We therefore the said justices, being neither of us patron of the parish church of* ——— *aforesaid, nor any way interested in any of the said tithes, rights, dues, or other payments, having duly summoned the said* A. O. *before us, and having also duly examined the*

truth

truth of the said complaint upon oath, do find that there is justly due for the same from the said A. O. *to him the said* A. I. *the sum of* 10 l. *and do order and appoint the aforesaid* A. O. *to pay or cause to be paid unto him the said* A. I. *the aforesaid sum of* 10 l. *And we do also order and appoint the aforesaid* A. O. *to pay or cause to be paid unto him the said* A. I. *the further sum of* 10 s. *for such costs and charges concerning the premisses as upon the merits of the cause do appear to us just and reasonable. Given under our hands and seals at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Distress for quakers tithes; on the 7 & 8 *W. c.* 34. and 1 *G. st.* 2. *c.* 6.

Westmorland. { To the constable of ———.

WHEREAS *upon the complaint of* A. I. *vicar of the parish church of* ——— *in the said county,* A. O. *of* ——— *in the parish aforesaid, in the county aforesaid, yeoman, being a person commonly called a quaker, hath been duly summoned to appear before* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, to be examined for non-payment of his tithes, and other rights, dues, and payments, belonging to the church of* ——— *aforesaid, and due unto him the said* A. I. *from him the said* A. O. *And whereas the said justices, upon examination thereof, have ordered him the said* A. O. *by writing under their hands and seals, to pay unto the said* A. I. *the sum of* 10 l. *for such his tithes, and other rights, dues, and payments as aforesaid, and moreover the sum of* 10 s. *for the charges of him the said* A. I. *in recovering the same, making in the whole the sum of* 10 l. 10 s. *And whereas it appeareth unto me* J. P. *esquire, being one of the said justices, and also being one of the two next justices to the parish church of* ——— *aforesaid, in the county aforesaid, not being patron of the said church, nor any way interested in any of the said tithes, or other rights, dues, or payments, that the said* A. O. *hath had due notice of the said order, but hath refused, and doth refuse to pay, and hath not paid, the said sum of* 10 l. 10 s. *nor any part thereof: These are therefore to authorize and command you, that you do forthwith levy the aforesaid sum of* 10 l. 10 s. *by distress and sale of the goods and chattels of him the said* A O *and out of the money arising from such sale, that you do pay or cause to be paid unto him the said* A. I. *the said sum of* 10 l. 10 s. *and thereout also deduct your necessary charges of distraining. And if any overplus shall remain, after such payment and deduction as aforesaid, that you do render the same unto him the said* A. O. *Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Tobacco.

Concerning the exporting of tobacco pipe clay, See Woollen Manufacture.

Planting tobacco.

1. NO perſon ſhall plant any tobacco; on pain of forfeiting the ſame, or the value thereof, or 40 *s.* for every rod or pole of ground planted with it, half to the king, and half to him that ſhall ſue in any court of record. 12 *C.* 2. *c.* 34. *ſ.* 1. And beſides the ſaid penalty, he ſhall moreover forfeit 10 *l.* for every rod or pole; one third to the king, one third to the poor, and one third to him that ſhall ſue in like manner. 15 *C.* 2. *c.* 7. *ſ.* 18.

And by the ſaid act of the 15 *C.* 2. *c.* 7. (which by the 5 *G.* *c.* 11. is continued along with the act of tonnage and poundage of the 12 *C.* 2. *c.* 4.) the juſtices ſhall a month before every ſeſſions, iſſue their warrants to all high and petty conſtables, to ſearch what tobacco is planted, cured, or made, and by whom; and to make preſentment in writing on oath at the next ſeſſions, of the names of ſuch perſons as have planted, cured, or made any tobacco, and what quantity of land is or was planted, and who are the tenants or occupiers thereof (who ſhall alſo be deemed the planters). *ſ.* 2.

Which preſentment ſhall be filed by the clerk of the peace in open ſeſſions; and after ſuch filing, ſhall be a ſufficient conviction in law of the perſons preſented, unleſs ſuch perſon preſented (having notice given to him of the preſentment by delivery of a copy thereof to him, or leaving ſuch copy at his uſual place of abode in the preſence of one witneſs, ten days before the next quarter ſeſſions) ſhall at the next ſeſſions after ſuch notice, traverſe the preſentment, and find ſureties for proſecuting and trying ſuch traverſe at the quarter ſeſſions next after ſuch traverſe entred or made. *ſ.* 3.

And all conſtables, bailiffs, and other publick officers, ſhall within 14 days after warrant from two juſtices, calling to their aſſiſtance whom they ſhall find neceſſary, pluck up, burn, conſume, tear in pieces, and utterly deſtroy all tobacco ſeed, plant, and leaf planted, ſowed, or growing in any field or ground. *ſ.* 4.

And if any tobacco ſhall be ſuffered to grow, or be conſumed in ſeed, plant, or leaf, by the ſpace of 14 days after receipt of ſuch warrant by the ſaid conſtables or other officers; they ſhall for every offence forfeit 5 *s.* for every rod, perch, or pole of ground planted with tobacco, and ſo proportionally for a greater or leſſer quantity, half to the king, and half to him that ſhall ſue. *ſ.* 5.

And if any ſhall refuſe or neglect to aſſiſt the conſtable, he ſhall on conviction before two juſtices, forfeit 5 *s.* to be levied by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can

can be found, to be committed to the common gaol for one week. *ſ.* 6.

And if any perſon ſhall reſiſt the conſtable or other perſon in the due execution hereof, he ſhall, on conviction before two juſtices, forfeit 5 *l.* by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can be found, to be committed to the common gaol for three months. *ſ.* 7.

But nothing herein ſhall hinder planting the ſame in gardens for phyſick or chirurgery, ſo as the quantity planted exceed not half a pole of ground. 12 *C.* 2. *c.* 34. *ſ.* 4. 22 & 23 *C.* 2. *c.* 26. *ſ.* 9.

Adulterating tobacco and ſnuff.

2. Every perſon who ſhall cut any walnut, hop, ſycomore, or other leaves, or any other herbs, plants, or materials (not being tobacco leaves or plants), or ſhall colour or cure any ſuch, to make the ſame reſemble tobacco; or ſhall ſell the ſame mixed or unmixed for tobacco,—ſhall forfeit 5 *s.* a pound, half to the king, (charges of the proſecution firſt deducted) and half with full coſts to him who ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 1.

And every perſon who ſhall make, mix, or colour any ſnuff, with oker, umber, or other colouring, except water tinged with *Venetian* red only; or ſhall mix with ſnuff, any fuſtick or yellow ebony, touchwood, or other wood, or any dirt, ſand, or ſmall tobacco ſifted from tobacco,—ſhall forfeit the ſame, and 3 *l.* for every pound weight, half to the king, and half to him that ſhall ſue 1 *G. ſt.* 2. *c.* 46. *ſ.* 7. 5 *G. c.* 11. *ſ.* 22.

And all ſuch leaves and other materials, and all engines, utenſils, and tools for working the ſame, may be ſearched for and ſeized, by warrant of three commiſſioners of the treaſury or of the cuſtoms. 1 *G. ſt.* 2. *c.* 46. *ſ.* 3.

But no houſe or warehouſe ſhall be opened to ſearch for or ſeize the ſame, but at ſeaſonable hours, and not without a ſpecial warrant from two juſtices of the peace. *ſ.* 4.

And the ſaid materials or engines found and ſeized within ſix miles of any port, ſhall be brought to the next cuſtomhouſe warehouſe; and if at a greater diſtance from any port, ſhall be ſecured by order of two juſtices at the king's charge, till the cauſe of ſuch ſeizure ſhall be determined at the next, or at fartheſt the ſecond quarter ſeſſions after ſeizure; and the ſame, after condemnation or recovery by judgment of ſuch ſeſſions, ſhall be openly burned or deſtroyed by order of the ſame, at his majeſty's charge. *ſ.* 4.

And any ſervant employed in manufacturing or ſelling ſuch leaves or materials, ſhall on conviction before two juſtices, by oath of one witneſs, be committed to the common gaol or houſe of correction, to be kept to hard labour not exceeding ſix months. *ſ.* 5.

Carrying tobacco or ſnuff by land.

3. By the 24 *G.* 2. *c.* 41. and the 26 *G.* 2. *c.* 13. No tobacco, or ſtalks, exceeding 24 *lb.* weight, nor any ſnuff exceeding 10 *lb.* ſhall be conveyed by land; unleſs, if it is *unmanufactured tobacco*, a certificate be firſt had from the officers at the port of importation, together with the *importer*'s oath thereto, that the duties were paid or ſecured at the importation, and when, and in what veſſel it was imported;

imported; and if the perſon applying for the certificate be a *purchaſer from the importer*, then on his oath, atteſting the marks and numbers of the identical hogſheads purchaſed, or out of which the tobacco was taken, and from whom purchaſed, and when; and if he be a *ſecond purchaſer*, then on his oath in like manner, provided that if it is an entire hogſhead, the name of the ſeller may be omitted in ſuch certificate.

And if it is *tobacco ſtalks or ſnuff, or other manufactured tobacco*, then not without a certificate and oath of the *importer* being firſt had, that ſuch ſtalks were ſtripped, or ſnuff or other manufactured tobacco was made from one or more hogſheads, for which the duties were paid or ſecured at the importation; and if the perſon applying for the certificate be a *purchaſer*, he ſhall make oath that ſuch ſtalks were ſtripped, or ſuch ſnuff or other manufactured tobacco was made from one or more hogſheads, which had been delivered and received according to the directions of the ſaid act of the 24 *G.* 2.

And before any ſuch tobacco, or ſtalks, or ſnuff, ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the package, with the marks and numbers ſet thereon, and the weight of each ſpecies of goods contained in each package, and the place from whence, and to which they are to be carried, and by whom, or the inn from whence, and to whom conſigned; and ſhall ſubſcribe his name, and make oath to the truth thereof; and the certificate ſhall expreſs the number of days it ſhall continue in force, and ſhall accompany the goods; and upon its arrival, the owner of the goods ſhall deliver it to the chief officer of the cuſtoms; and if there be none ſuch, then to the officers of exciſe, who ſhall examine the ſame with the goods, and if they agree, the goods may be taken away by the owner, and the officer ſhall thereupon enter ſuch certificate in a book for that purpoſe, and tranſmit an account thereof to the officer appointed by the treaſury for keeping ſuch accounts.

And if any tobacco, or ſtalks, exceeding 24 *lb.* or ſnuff exceeding 10 *lb.* ſhall be found removing by land from the port of importation, without having one or other of the certificates before directed; the ſame, together with the packages, horſes, and carriages ſhall be forfeited; and the carrier ſhall beſides be committed to the county gaol for one month by one juſtice where the offence ſhall be committed, or the offender ſhall be found.

And any officer of the cuſtoms or exciſe may ſeize the ſame, and proſecute; and the proof that the ſame had been removed with a proper certificate, and that the duties had been paid or ſecured, ſhall be on the claimer, and not on the officer.

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* which ſhall have been *carried coaſtwiſe*, from the port of importation to any other place, ſhall be removed from thence by land, without a certificate from the officers of the port to which they were carried coaſtwiſe, that it appears to them by the entries of the certificates in their books which came with the goods from the place of importation, that the duties were paid, and alſo in what veſſel they were brought, and when, and alſo that the per-

ſon

ſon applying to them for the ſame, had made oath to the truth thereof; and before ſuch goods ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the names of each package, with the marks and numbers thereon, and the weight of each ſpecies in each package, and the place from and to which they are to be carried, and the name of the perſon to whom ſent, and ſhall ſubſcribe his name, and make oath to the truth thereof: And if any ſuch goods ſhall be found removing without ſuch certificate, or if it appear that ſuch certificate is forged; the goods, package, horſes, and carriages ſhall be forfeited, and the carrier ſhall alſo forfeit 10 *l.* and be committed to the county gaol for one month, by one juſtice where the offence ſhall be committed, or the offender ſhall be found. *ſ.* 22.

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* ſhall be conveyed by land, unleſs the package be marked on the outſide, with the reſpective words *tobacco*, *tobacco ſtalks*, or *ſnuff*, in letters not leſs than three inches in length; on pain of forfeiture of the ſame, with the package, and 1 *s.* a pound to be paid by the owner. *ſ.* 23.

The ſaid penalties to be half to the king, and half to him that ſhall ſue in any of the courts at *Weſtminſter*. *ſ.* 33.

Toll. See Miller.

Torn.

1. THE ſheriff's torn is the king's court of record, holden before the ſheriff, for redreſſing of common grievances within the county. 2 *Hawv.* 55. Torn, what.

2. And foraſmuch as the ſheriff did go in circuit twice every year, throughout every hundred within the county, it was called *tour*, or *tourn*, which ſignifieth a circuit or perambulation. 2 *Inſt.* 70. Meaning of the word.

3. By the 31 *Ed.* 3. *ſt.* 1. *c.* 15. The ſheriff ſhall make his turn yearly, once within a month after *Eaſter*, and another time within a month after *Michaelmas*; and if he holds it in other manner, he ſhall loſe his turn for the time; that is, the court ſo holden for that time ſhall be void, and the ſheriff ſhall loſe the profits thereof. 2 *Inſt.* 71. When to be holden.

And he ſhall keep his turn no where but in due place and accuſtomed. 9 *H.* 3. *c.* 35.

4. Peers, clergymen, and tenants in ancient demeſne, are privileged from appearing at the torn. 52 *H.* 3. *c.* 10. 2 *Hawv.* 57. Who are to appear at the torn.

Alſo they that have hundreds of their own ſhall not be bound to appear at the turn, but in the bailiwicks where they be dwelling. 52 *H.* 3. *c.* 10.

But all other perſons, being above the age of 12 years, are bound to attend at ſuch courts, in order to make inquiry of all common

common grievances, and alſo to give ſecurity to the publick for their good behaviour, by taking an oath to be faithful to the king, and to obſerve his laws, and alſo by incorporating themſelves into ſome free pledge or tithing, which formerly ſignified a certain number of families living together in the ſame precinct, the maſters whereof were every one of them mutually bound for each other, and puniſhable for the default of any member of any ſuch family, in not appearing to anſwer for himſelf on any accuſation made againſt him. 2 *Haw.* 55.

Jurors in the torn.

5. No bailiff, or other officer, ſhall return or impanel any perſon upon an inquiſition in the torn, but ſuch as be of good name and fame, and have 20*s.* a year freehold within the ſhire, or 26*s.* 8*d.* cuſtomary or copyhold; on pain of 40*s.* and the ſheriff other 40*s.* half to the king, and half to him that will ſue: and an indictment otherwiſe taken ſhall be void. 1 *R.* 3. *c.* 4.

But if the party except not to it upon his arraignment, he is concluded by that omiſſion. 2 *H. H.* 70.

And the jury ſhall put their ſeals to their inquiſitions. 13 *Ed.* 1. *c.* 13.

Indictments to be indented.

6. And indictments in the torn ſhall be by roll indented, one part to remain with the indictors, and the other with him that taketh the inqueſt. 1 *Ed.* 3. *c.* 17.

Diſtreſs and ſale.

7. It ſeems to be ſettled at this day, that a diſtreſs is incident of common right to every fine and amercement in the torn; and that the offender's goods may be diſtrained in any lands within the precinct of the court, or in the highway; and that the goods diſtrained may be ſold. But the bailiff muſt have a ſpecial warrant to make diſtreſs. 2 *Haw.* 60, 61.

Or the fine may be recovered by action of debt. 2 *Haw.* 61.

Within what time offences are cognizable in the torn.

8. But no offence is cognizable in the torn, unleſs it ariſe ſince the holding of the laſt court. 2 *Haw.* 66.

Traverſe.

9. It ſeems to be agreed, that a preſentment in the torn, of any offence within the juriſdiction of the court, being neither capital, nor concerning any freehold, ſubjects the party to a fine or amerciament, without any traverſe. 2 *Haw.* 71.

Indictment to be certified to the ſeſſions.

10. By the *magna charta*, *c.* 17. The ſheriff is reſtrained in his torn, from hearing and determining indictments of felonies; yet the ſheriffs did commonly make out proceſs or precepts in nature of *capias* to arreſt the parties; but by the 1 *Ed.* 4. *c.* 2. their power of making out proceſs upon theſe indictments is taken away, as well in caſes of indictments of felony as other miſdemeanors within their cognizance, but they are to deliver all ſuch indictments and preſentments to the next ſeſſions, who are to make out proceſs thereupon, and hear and determine them. 2 *H. H.* 71.

And the eſtreats of the fines thereupon ſhall be inrolled, and by indenture be delivered to the ſheriff, to the uſe of him that was ſheriff at the time of the indictment ſo taken in the torn as aforeſaid. 1 *Ed.* 4. *c.* 2.

Conſtables choſen in the torn.

11. The conſtables of common right are to be choſen and ſworn in the torn or leet. 2 *Haw.* 62.

Trades. See Apprentices.

Transportation.

1. WHERE any person shall be convicted of grand or petit larceny, or any felonious stealing or taking of money or goods, within the benefit of clergy, and liable only to burning in the hand or whipping (except persons convicted for receiving or buying stolen goods, knowing them to be stolen) the court before whom he shall be convicted, or any subsequent court held with like authority, instead of ordering him to be burnt in the hand or whipt, may order him to be sent as soon as conveniently may be, to some of his majesty's plantations in *America*, for seven years; and shall have power to convey, transfer, and make over such offender, by order of court, to the use of any person who shall contract for the performance of such transportation, to him and his assigns, for seven years. 4 *G. c.* 11. *s.* 1. 6 *G. c.* 23. *s.* 1. For felonies within clergy.

2. And where any offender shall be convicted of any crime, for which he is excluded the benefit of clergy, and the king shall be pleased to extend mercy to him, on condition of transportation to any part of *America*, and such intention of mercy be signified by a principal secretary of state, it shall be lawful for any court having proper authority, to allow such offender the benefit of a pardon under the great seal, and to order the like transfer and conveyance, to any person (who will contract for the performance of such transportation) and to his assigns, of such offender, as also of any person convicted of receiving or buying stolen goods knowing them to be stolen, for the term of 14 years, in case such condition of transportation be general, or else for such other term as shall be made part of such condition. 4 *G. c.* 11. *s.* 1. For felonies without benefit of clergy.

3. Every such person, to whom any such court shall order the offender to be transferred or conveyed, before he shall be delivered over to him or his assigns to be transported, shall contract with such person as shall be ordered by the court, and give sufficient security to the satisfaction of such court, that he will transport, or cause to be transported effectually, such offender, to such of his majesty's plantations in *America* as shall be ordered by the court, and procure an authentic certificate from the governor, or the chief custom house officer of the place (which they shall give without fee) of the landing of such offender (death and casualties of the sea excepted), and that the said offender shall not be suffered to return from the said place to any part of *Great Britain* or *Ireland*, by the wilful default of such person so contracting, or of his assigns. 4 *G. c.* 11. *s.* 3. Contract for transportation.

4. The court may appoint, if they think fit, two or more justices where the offender shall be convicted, who shall have power to contract with any person for performance of the transportation; and may order the like security, and cause the felons to be delivered Persons impowered to contract.

vered by the gaoler to the perſon contracting, or his aſſigns; which contracts and ſecurity ſhall be certified by the juſtices who ſhall make and take the ſame, to the next court held with like authority for the place where the felon was convicted, to be filed and kept amongſt the records of ſuch court. 6 *G. c.* 23. *ſ.* 2.

Bond for transportation.

5. And all ſecurities for tranſportation ſhall be by bond in the name of the clerk of the peace, who ſhall (by ſuch ſuit as the juſtices in ſeſſions ſhall direct) proſecute ſuch bond in his own name, and be paid ſuch coſts as he ſhall ſuſtain in ſuch ſuit for the penalty of ſuch bond, or otherwiſe howſoever by reaſon thereof, out of the publick ſtock by the treaſurer; and all money recovered on ſuch bond, ſhall be to the uſe of the county or place, and be paid to the treaſurer, and be part of the publick ſtock. 6 *G. c.* 23. *ſ.* 4.

Conveying to the port.

6. The perſon ſo contracting, and to whom any felon ſhall be delivered to be tranſported, or any perſon directed by the ſaid juſtices (impowered to contract as aforeſaid), or their aſſigns, may in ſuch manner as they think fit, carry and ſecure the felon, in and thro' any county, toward the ſea port; and if any perſon ſhall reſcue ſuch felon, or aſſiſt him in eſcaping, he ſhall be guilty of felony without benefit of clergy. 6 *G. c.* 23. *ſ.* 5.

Charges of transportation.

7. All charges in and about making the contracts, taking ſecurities, and conveying of felons in order to be tranſported, ſhall be born by the county or place for which the court was held; and the treaſurer ſhall, by order of the juſtices in ſeſſions, pay the ſame to ſuch perſons as ſhall be employed for the purpoſes aforeſaid. 6 *G. c.* 23. *ſ.* 3.

Eſcaping from on ſhipboard.

8. If any perſon ſhall aſſiſt any felon to attempt his eſcape, from any boat or veſſel carrying felons for tranſportation, he ſhall (being proſecuted within a year) be guilty of felony, and tranſported for ſeven years. 16 *G.* 2. *c.* 31. *ſ.* 3, 4.

Perſons tranſporting themſelves voluntarily.

9. Where any perſon of the age of 15, and under 21, ſhall be willing to be tranſported, and to enter into any ſervice in any of his majeſty's plantations in *America*, it ſhall be lawful for any merchant or other, to contract with him for ſuch ſervice, not exceeding eight years; provided ſuch perſon come before the lord mayor or a juſtice of the peace, if the contract be in *London*, or before two juſtices if elſewhere, and before him or them acknowledge ſuch conſent, and ſign the contract in his or their preſence, and with his or their approbation. And then it ſhall be lawful for ſuch merchant or other, to tranſport ſuch perſon, and keep him according to the contract: Which ſaid contract, and approbation of ſuch magiſtrate or magiſtrates, with the tenor of ſuch contract, ſhall be certified by ſuch magiſtrate or magiſtrates to the next ſeſſions, to be regiſtred by the clerk of the peace without fee. 4 *G. c.* 11. *ſ.* 5.

Returning from tranſportation.

10. And if any offender ſo ordered to be tranſported, ſhall return into *Great Britain* or *Ireland*, before the end of his term, he ſhall be liable to be puniſhed as a perſon attainted of felony without benefit of clergy, and execution ſhall be awarded againſt him accordingly. 4 *G. c.* 11. *ſ.* 2.

11. And

11. And by the 16 *G.* 2. *c.* 15. If any felon or other offender, ordered for transportation, or having agreed to transport himself on certain conditions either for life or any number of years, shall be afterwards at large in any part of *Great Britain*, without some lawful cause, before the expiration of the term; he shall be guilty of felony without benefit of clergy. *s.* 1. Being at large after order or agreement for transportation.

And he may be tried at the assizes of the county or liberty where he shall be apprehended, or from whence he was ordered to be transported; and the clerk of assize, and clerk of the peace, where such orders of transportation shall be made, shall, at the request of the prosecutor, or any other in the king's behalf, certify a transcript briefly and in a few words, containing the effect and tenor of every indictment and conviction of such felon, and of the *order and contract* for transportation, to the judges where he shall be indicted (not taking for the same above 2 *s.* 6 *d.*) which certificate being produced in court shall be a sufficient proof that such person hath been convicted and ordered to be transported. 6 *G.* *c.* 23. *s.* 6, 7. 16 *G.* 2. *c.* 15. *s.* 2.

Order and contract] So it is in the original record; but in Mr. *Hawkins*'s edition of the statutes, it is *order or contract*, which may induce a mistake: for as the words *order or contract* do imply, that a person may be convicted upon a certificate either of the one, or of the other, it may happen in such case that an innocent person shall be condemned; for if a *contract* for transportation shall be certified only, and not the *order* for transportation, it is possible there may never have been any such order, and then such contract, being without the party's own consent or knowledge, and without any order to support it, is void.

12. And whoever shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy, any such offender, shall be intitled to a reward of 20 *l.* and shall have the like certificate, and like payments made, without fee, as any persons may be intitled to for the apprehending, prosecuting, and convicting of highwaymen. 16 *G.* 2. *c.* 15. *s.* 3. Reward for apprehending such person.

13. But the king may at any time pardon and dispense with the transportation, and allow of the offender's return, he paying to his proprietor such sum as shall be adjudged reasonable by any two justices of the peace within the province where such proprietor dwells. And where the offender shall have served his term, such service shall have the effect of a pardon. 4 *G.* *c.* 11. *s.* 2. Pardon.

Traverse.

1. TRAVERSE took its name from the *French de traverse*, which is no other than *de transverso* in *Latin*, signifying, *on the other side*; because as the indictment on the one side chargeth the party, so he on the other side cometh in to discharge himself. *Lamb.* 540. Traverse, whence.

Traverse, what.

2. To traverse an indictment then, is to take issue upon the chief matter thereof; which is the same as if one shall say, *to make contradiction*, or *to deny the point of the indictment:* As in a presentment against a person for a highway overflowed with water, for default of scouring a ditch, which he, and they whose estate he hath in certain lands there, have used to scour or cleanse; such person may traverse either the matter, to wit, that there is no highway there, or that the ditch is sufficiently scoured; or otherwise, he may traverse the cause, to wit, that he hath not that land, or that he and they whose estate he hath have not used to scour the ditch. *Lamb.* 541.

Form of a traverse.

3. And forasmuch as in the record of one traverse, there is at once discovered, the style of the sessions, the indictment, the process to answer, the traverse it self, the verdict, and judgment thereupon, the process of execution, the yielding of the parties, and the assessment of their fines, so that it alone may serve instead of all, it is judged requisite to insert the same as follows:

(Style of the sessions.)

Somerset. HERETOFORE, *to wit, at the sessions of the peace held at* Bridgewater *in the county aforesaid, on the* Tuesday *next before the feast of St.* Matthew *the apostle, in the* ——— *year of the reign of* ——— *by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth, before* J. P. *and* K. P. *esquires, and others their associates, justices of our said lord the king, assigned to keep the peace in the county aforesaid, as also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, by the oath of twelve jurors it is presented, that* John Long *of* ——— R. M. *of* ——— *and* T. L. *of* ——— *with divers others unknown, evil doers and disturbers of the peace of our said lord the king, in a warlike manner arrayed, joined and assembled, on the* ——— *day of* ——— *in the night of the same day, in the year aforesaid, with force and arms, to wit, with swords, staves, clubs, guns, and other arms, as well offensive as defensive, at* ——— *the close of one* W. Willet *(called* B.) *unlawfully, riotously, and routously broke and entred, and eight waggon loads of hay, to the value of* ——— *then and there being, of the goods and chattels of the said* W. W. *then and there unjustly and unlawfully took and carried away, against the peace of our said lord the king, and against the form of the statute in that case made and provided: Whereupon it was commanded to the sheriff, that he should not omit,* &c. *but cause them to come to answer. And afterwards, to wit, on the* Tuesday *aforesaid next before the feast of St.* Matthew *the apostle, in the year aforesaid, before the aforesaid justices, came the aforesaid* J. L. R. M. *and* T. L. *in their proper persons, and having had the hearing of the indictment aforesaid, severally say, that they are thereof not guilty, and of this they put themselves upon the country; and* Adam Martin, *who for our lord the king in this behalf prosecutes, in like manner* &c. *Therefore let there come thereupon a jury before the justices of our said lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine* &c. *at the sessions of the peace at* Welles &c. *on the* Tuesday *next after the* Epiphany

(The indictment.)

(Process to answer.)

(Traverse.)

(Jury.)

Epiphany *of our lord then next to be holden, And who* &c. *To recognize* &c. *Because as well* &c. *The same day is given as well to the aforesaid* A. M. *who prosecutes* &c. *as to the aforesaid* J. L. R. M. *and* T. L. &c. *To which sessions of the peace holden at* W. *aforesaid in the county aforesaid, on the aforesaid day* &c. *before* ——— *and their associates, justices of our said lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, came as well the aforesaid* A. M. *who prosecutes* &c. *as the aforesaid* J. L. R. M. *and* T. L. *in their proper persons. And the jurors aforesaid, by the sheriff of the county aforesaid for this impanelled, and demanded, to wit,* A. B. C. D. &c. *likewise did come, who to say the truth concerning the premisses being tried and sworn, say upon their oath, that the aforesaid* J. L. R. M. *and* T. L. *are guilty, and every of them is guilty, of the trespass, contempt, and riot aforesaid, in the indictment aforesaid above specified, in manner and form as against them is above supposed. Therefore it is considered by the court, that the aforesaid* J. L. R. M. *and* T. L. *be taken to satisfy our lord the king of their fines, by occasion of the trespass, contempt, and riot aforesaid. Which* J. L. R. M. *and* T. L. *then and there present in court, prayed that they to a fine with our said lord the king, by the occasion aforesaid, may be admitted; and thereof they put themselves severally upon the mercy of our lord the king. And the fine of the same* J. L. *by the justices aforesaid is assessed, at* 3 l. 6 s. 8 d. *and the fine of the same* R. M. *is assessed at* 20 s. *and the fine of the same* T. L. *is assessed at* 5 l. *of good and lawful money of* Great Britain, *to the use and behoof of our said lord the king.* Lamb. 543.

(Day given.) (Verdict.) (Judgment.) (Process of execution.) (Fine assessed.)

4. Every defendant indicted for a misdemeanor, should give full eight days notice of trial to the prosecutor, before the assizes, if the trial is to be there; if at the sessions, it is usual to give two or three days notice. *Cr. Circ.* 20, 48. Notice of trial.

Treason.

1. TREASON, according to Lord *Coke*, is derived from *trahir*, to betray; and *trahison*, by contraction *treason*, is the betraying it self. 3 *Inst.* 4. Meaning of the word treason.

Treason, generally spoken, is intended, not of petit treason, but of high treason only. 1 *H. H.* 316.

2. Notwithstanding that treason and misprision of treason are not within the letter of the commission of the peace, yet inasmuch as they are against the peace of the king, and of the realm, any justice of the peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence. And such justice may take the examination of the person so apprehended, and the information of all those who Power of justices of the peace therein.

can give any material evidence against him, and put the same in writing; and also bind over such who are able to give any such evidence, to the king's bench, or gaol delivery, and certify his proceedings to such court. 2 *Haw.* 39. *Hal. Pl.* 168. 1 *H. H.* 372.

Bail. 3. And having committed the offender (for he is by no means bailable by justices of the peace, 3 *Ed.* 1. *c.* 15. 2 *Haw.* 99.) it may be advisable for him to send an account immediately of all the particulars, to a secretary of state.

Treason by the 25 Ed. 3. 4. By the statute of the 25 *Ed.* 3. *st.* 5. *c.* 2. (which Lord *Hale* calls a *sacred* act; and Lord *Coke* an *excellent* act, and the king who made it a *blessed* king, and the parliament a *blessed* parliament;) All treasons which had been uncertain before, were settled. Which act, by the 1 *Mar. sess.* 1. *c.* 1. is reinforced, and again made the only standard of treason; and all statutes, between the said statutes of the 25 *Ed.* 3. and 1 *Mar.* which made any offences high or petit treason, or misprision of treason, are abrogated; so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 *Ed.* 3. or made such by some statute since the 1 *Mar.*

And therefore I shall first consider such offences as are high treason within the said statute of the 25 *Ed.* 3. and then such as are made treason by statutes subsequent to the said statute of the 1 *Mar.*

The words of the statute of the 25 *Ed.* 3. as to this matter, are as follows:

Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not; the king, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to say, When a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; or if a man do violate the king's companion (that his, his wife, 3 *Inst.* 9.) *or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere; and thereof be probably* (proveablement, proveably) *attainted of open deed, by the people of their condition. And if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of* England, *knowing the money to be false; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices.*

And by the statute of the 1 *Mar. sess.* 1. *c.* 1. (which Lord *Hale* calls another excellent law) *No act, deed, or offence being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the* 25 Ed. 3. And this

this (he ſays) at one blow laid flat all the numerous treaſons at any time enacted ſince the 25 *Ed.* 3. 1 *H. H.* 308.

Of open deed] Lord *Coke* (3 *Inſt.* 14, 140.) ſeems to be of opinion, upon the ſaid act of the 25 *Ed.* 3. that bare *words* are not a ſufficient *overt act*, or *open deed*, whereby to convict a perſon of treaſon; but that they are miſpriſion of treaſon only. So alſo Lord *Hale* (1 *H. H.* 111, 118. and elſewhere throughout) ſeemeth to think, that words, unleſs put into writing, are not regularly an overt act. But Mr. *Hawkins* (1 *Haw.* 39.) argues the contrary, and amongſt other reaſons for his opinion, he obſerves, that to charge a man with ſpeaking treaſon is unqueſtionably actionable, which could not be, if no words could amount to treaſon: alſo, that as in caſe of felony, he who by command or perſuaſion induceth another to commit felony, is an acceſſary in felony, ſo he who does the ſame in treaſon is a principal traytor (there being no acceſſaries in treaſon, but all being principals); and yet ſuch perſon doth no act but by words.

And it has been the conſtant practice, ever ſince the revolution at leaſt, where a perſon by treaſonable diſcourſes hath manifeſted a deſign to murder or depoſe the king, to convict him upon ſuch evidence. And in *Lowick*'s caſe, *Holt* Ch. J. declared, that *expreſs words* were not neceſſary to convict a man of high treaſon; but if from the tenor of his diſcourſe the jury is ſatisfied he was engaged in a deſign againſt the king's life, this is ſufficient to convict the priſoner. *Read. Treaſ.* 146.

5. Offences made treaſon ſince the 1 *Mar.* are as follows: Treaſons ſince the 1 Mar.

(1) With regard to the *pretender*——By the 6 *An. c.* 7. If any perſon ſhall by writing or printing affirm, that the pretender hath any right to the crown, or any other perſon otherwiſe than according to act of parliament, he ſhall be guilty of high treaſon. And if any perſon ſhall by preaching, teaching, or adviſed ſpeaking affirm the ſame, he ſhall incur a *præmunire*.

But no perſon ſhall be proſecuted for words, unleſs oath be made thereof before a juſtice in 3 days; and the proſecution be within 3 months; and the conviction on the oath of two witneſſes.

And by the 13 *W. c.* 3. If any perſon ſhall hold any correſpondence with the pretender, or any perſon employed by him, or ſhall remit any money to his uſe, he ſhall be guilty of high treaſon. And by the 17 *G.* 2. *c.* 39. This is extended to the pretender's ſons.

(2) Offences in relation to the coin, are made treaſon by many ſtatutes; which are treated of in title **Coin**.

(3) Alſo there are many offences made treaſon, with regard to the popiſh uſurped juriſdiction; which are treated of under title **Popery**.

6. In high treaſon, as hath been ſaid before, there are no acceſſaries, but all are principals; and therefore whatſoever act or conſent will make a man acceſſary to a felony before the act done, the ſame will make him a principal in caſe of high treaſon. 3 *Inſt.* 9. 21. Acceſſaries in high treaſon.

Prosecution to be in 3 years.

7. By the 7 *W. c.* 3. No persons shall be prosecuted for high treason, but within 3 years after the offence committed; except in the case of designing to assassinate the king's person.

Trial to be the next term.

8. And by the 31 *C.* 2. *c.* 2. Persons committed for high treason, shall be indicted the next term, or next assize; otherwise they shall be let to bail, unless it appear to the court, upon oath, that the witnesses for the king could not be produced in that time; and in such case, they shall be indicted the second term or assize, or else discharged.

Copy of the indictment.

9. Persons indicted for high treason whereby corruption of blood shall be made, or for misprision of such treason (except for counterfeiting the coin, the great seal, privy seal, privy signet, or sign manual) shall have a copy of the indictment (but not the names of the witnesses) delivered to them 5 days before trial. 7 *W. c.* 3.

Copy of the panel.

10. And they shall have copies of the panel of the jurors delivered to them, two days before trial. 7 *W. c.* 3.

Process for witnesses.

11. And shall have process of court to compel their witnesses to appear. 7 *W. c.* 3.

List of the witnesses.

12. And moreover, after the death of the person pretending to be king of *England* by the name of *James* the third, when a person is indicted for high treason, or misprision of treason, both a copy of the indictment, and lists of the jurors, and also of the witnesses, shall be delivered to the party indicted, ten days before the trial. 7 *An. c.* 21. *s.* 11.

Counsel.

13. And such persons shall have two such counsel as they shall desire assigned them by the court, who shall have access to them at reasonable times. 7 *W. c.* 3.

Likewise persons impeached by the house of commons, of high treason whereby corruption of blood shall be made, shall be admitted to make their full defence by two counsel, who shall be assigned for that purpose, in like manner as upon indictments and other prosecutions. 20 *G.* 2. *c.* 30.

Witnesses sworn.

14. And they shall be allowed to make their defence by witnesses on oath. 7 *W. c.* 3.

Two witnesses.

15. And they shall not be attainted but on the oath of two witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same treason; unless they shall confess, or stand mute, or refuse to plead, or challenge peremptorily above 35 of the jury. 7 *W. c.* 3.

Judgment.

16. The judgment for high treason (not relating to the coin) is, That he shall be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure. 2 *Haw.* 443.

The judgment of a woman for high treason, is to be drawn and burnt. 3 *Inst.* 211.

17. In

17. In the said judgment is implied forfeiture of lands and goods to the king, loss of dower, and corruption of blood. 3 *Inst.* 211. Forfeiture.

But after the death of the pretender (and of his eldest and every other son, 17 *G.* 2. *c.* 39. *s.* 3.) no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender during his life. 7 *An.* *c.* 21. *s.* 10.

Petit treason.

1. *Moreover, there is another manner of treason, when a servant slayeth his master, or a wife her husband; or when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience.* 25 Ed. 3. st. 5. c. 2. Petit treason, what.

High treason is against the king, petit treason against the subjects. 3 *Inst.* 20.

2. No person shall be convicted of petit treason, but on the oath of two witnesses, or confession. 1 *Ed.* 6. *c.* 12. *s.* 22. Two witnesses.

3. The judgment against a man for petit treason is, that he shall be drawn to the place of execution, and there hanged by the neck till he be dead: The judgment against a woman is, that she shall be drawn to the place of execution, and there burnt. 2 *Haw.* 444. Judgment.

4. The consequence of attainder, is, forfeiture of lands (to the lord of the fee), and of goods; loss of dower; and corruption of blood. 2 *Haw.* *c.* 49. Forfeiture.

5. Altho' there can be no accessaries in high treason, yet in petit treason there may be accessaries both before and after. 3 *Inst.* 21. Accessary.

And accessaries before the fact are ousted of clergy, by several statutes; but accessaries after the fact have their clergy in all cases of petit treason, for no statute takes it from them. 2 *H. H.* 342.

Misprision of treason.

1. Misprision cometh of the *French* word *mespris*, which properly signifieth neglect or contempt: And misprision of treason, in legal understanding, signifieth, when one knoweth of any treason, tho' no party or consenter to it, yet conceals it, and doth not reveal it in convenient time. 3 *Inst.* 36. 1 *H. H.* 371. Misprision, what.

2. The judgment of misprision of treason is, to be imprisoned during life, to forfeit all his goods for ever, and the profits of his lands during life. 3 *Inst.* 36. Judgment.

3. Every man therefore that knoweth a treason, ought with all speed to reveal it to the king, his privy council, or other magistrate. *H. Pl.* 127. Caution.

4. But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony. 1 *H. H.* 375. Misprision of petit treason.

Treasure found.

Treasure trove, what.

1. TREASURE trove, or treasure found, is *where any gold or silver, in coin, plate, or bullion, hath been of ancient time hidden, wheresoever it be found, whereof no person can prove any property, it doth belong to the king, or to some other by the king's grant, or prescription.* 3 Inst. 132.

Gold or silver] For if it be of any other metal, it is no treasure; and if it be no treasure, it belongs not to the king, for it must be *treasure* trove. 3 *Inst.* 132.

Wheresoever it be found] Whether it be of ancient time hidden in the ground, or in the roof or walls, or other part of a castle, house, building, ruins, or elsewhere, so as the owner cannot be known. 3 *Inst.* 132.

Belong to the king] The reason whereof is a rule of the common law, that such goods whereof no person can claim any property, belong to the king; as wrecks, strays, and the like. 3 *Inst.* 132.

Taking treasure trove, not felony.

2. Larceny cannot be committed of such things whereof no man hath any determinate property, tho' the things themselves are capable of property, as of treasure trove, or wreck till seized; tho' he that hath them in point of franchise, may have a special action against him that takes them. 1 *H. H.* 510.

But finable.

3. The punishment for concealment of treasure trove, is by fine and imprisonment. 3 *Inst.* 133.

The coroner may inquire thereof.

4. And it belongeth to the coroner to inquire thereof. 3 *Inst.* 133.

Concerning which it is enacted by the 4 *Ed.* 1. *st.* 2. that *a coroner, being certified by the king's bailiffs, or other honest men of the country, shall go to the places where treasure is said to be found.* And it is farther enacted in the same statute, that *the coroner ought to inquire of treasure that is found, who were the finders, and likewise who is suspected thereof; and that may be well perceived, where one liveth riotously, haunting taverns, and hath done so of long time; hereupon he may be attached for this suspicion, by* 4, *or* 6, *or more pledges, if he may be found.*

Also the sheriff in his torn.

5. Also it seems to be agreed, that all seizures of treasure trove, belonging to the king, may be inquired of in the sheriff's torn: But it seems questionable, whether a prescription in a court leet to inquire of such seizure belonging to the lord of it, being a subject, be good or not, since it is against the general rule of the law, for the leet to take cognizance of trespasses done to the private damage of the lord, because that would make him his own judge. 2 *Haw.* 67.

Treasurer.

1. THE treasurers shall be persons resident in the county or division, and shall be appointed by the justices at their general or quarter sessions; first giving sufficient security to be accountable for the money which shall be paid to them in pursuance of this act (for the levying of county rates), and to pay such sums as shall be ordered by the justices in sessions, and for the due and faithful execution of the trusts reposed in them. 12 *G.* 2. *c.* 29. *s.* 6. Treasurer how chosen.

2. And they may continue the treasurer from time to time in his office, and remove him at their pleasure, and appoint another in his place; and may allow him a salary not exceeding 20 *l.* a year, to be paid out of the county rates. 12 *G.* 2. *c.* 29. *s.* 11. Continuance in his office; and his salary.

3. And that the treasurers may be the better amenable to the court of king's bench, with regard to the payment of the money for relief of the prisoners of the *King's Bench* and *Marshalsea* prisons, Every person who shall be elected treasurer of any county, shall in 30 days after his election transmit his name and place of abode to the clerk of the crown in the court of king's bench, to be by him entred or registred, for which entry no fee shall be taken: And if such treasurer shall neglect or refuse so to do, then upon the report of the said clerk of the crown, the said court may make a rule upon him, requiring his performance; which shall be inforced as other rules of the said court, at the charge of such treasurer. 11 *G.* 2. *c.* 20. His election to be certified into the king's bench.

4. And the treasurer shall keep books of entries of the several sums by him received and paid; and shall deliver in a true and exact account upon oath if required of his receipts and disbursements, distinguishing the particular uses to which the several sums have been applied, to the justices at every general or quarter sessions, and shall lay before them the proper vouchers for the same: Which accounts and vouchers, shall be deposited with the clerk of the peace, to be kept amongst the records, to be inspected by any of the justices without fee. 12 *G.* 2. *c.* 29. *s.* 7, 8. His accounts.

5. And the discharge of the justices, by their order at their general or quarter sessions, shall be a sufficient release and discharge to such treasurer. 12 *G.* 2. *c.* 29. *s.* 9. And discharge.

Trees. See Wood.

Trespass. See Justice of the peace.

Trial. See Jury, Sessions.

Trophy money. See Militia.

Turnips.

IF any perſon ſhall ſteal and take away, or maliciouſly pull up and deſtroy any turnips growing, or being in any grounds belonging to any perſon, and be convicted thereof (within 30 days) by confeſſion, or oath of one witneſs, before one juſtice; he ſhall for the firſt offence pay to the owner ſuch ſatisfaction for the damage, and within ſuch time, as the juſtice ſhall appoint; and ſhall alſo pay down, upon conviction, to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10*s.* as the juſtice ſhall think fit; and if he ſhall not make ſuch recompence and payment, the juſtice may either commit him to the houſe of correction for any time not exceeding one month, or order him to be whipt by the conſtable: And being convicted of a ſecond offence, he ſhall be committed to the houſe of correction for 3 months. 23 *G.* 2. *c.* 26. *ſ.* 13, 14.

Turnpikes. See Highways.

Vagrants.

THIS title consisteth chiefly of the statute of the 17 *G.* 2. *c.* 5. commonly called the vagrant act; but in the progress thereof, the other statutes relating to vagrants are inserted in the places where they properly fall in.

I. Idle and disorderly persons.
II. Rogues and vagabonds.
III. Incorrigible rogues.
IV. Apprehending.
V. Reward for apprehending.
VI. Penalty for not apprehending.
VII. Privy search.
VIII. Examination.
IX. Whipping or imprisonment.
X. Further punishment.
XI. Conveying.
XII. What to be done with at the place to which they are sent.
XIII. Scottish *vagrants.*
XIV. Irish *vagrants.*
XV. Lunatick vagrants.
XVI. Penalty of lodging vagrants.
XVII. Children born in vagrancy.
XVIII. General penalty for hindring the execution of the vagrant act.
XIX. Charges of maintaining and conveying vagrants.
XX. Appeal.
XXI. Treble costs.
XXII. Exception of special franchises.

I. Idle and disorderly persons.

By the 7 *J.* *c.* 4. Idle and disorderly persons shall be sent to the house of correction; and by the 17 *G.* 2. *c.* 5. idle and disorderly persons are thus described: (1) All persons who threaten to run away, and leave their wives or children to the parish. (2) All persons who shall unlawfully return to the parish or place from

from whence they have been legally removed by order of two juſtices, without bringing a certificate from the pariſh or place whereunto they belong. (3) All perſons who not having wherewith to maintain themſelves, live idle without employment, and refuſe to work for the uſual and common wages given to other labourers in the like work, in the pariſhes or places where they are. (4) All perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages, to beg or gather alms in the pariſhes or places where they dwell——All theſe ſhall be deemed idle and diſorderly perſons. And it ſhall be lawful for one juſtice to commit ſuch offenders (being thereof convicted before him, by his own view, or confeſſion, or oath of one witneſs) to the houſe of correction, to be kept to hard labour not exceeding one month. And any perſon may apprehend, and carry before a juſtice, any ſuch perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages to beg alms in the pariſhes or places where they dwell; and if they ſhall reſiſt, or eſcape from the perſon apprehending them, they ſhall be puniſhed as rogues and vagabonds. And the ſaid juſtice, by warrant under his hand and ſeal, may order (A) any overſeer where ſuch offender ſhall be apprehended, to pay 5 *s.* to any perſon in ſuch pariſh or place ſo apprehending them, for every offender ſo apprehended; to be allowed in his accounts, on producing the juſtice's order, and the perſon's receipt to whom it was paid: And if the overſeer ſhall neglect or refuſe to pay the ſame, the ſaid juſtice on oath thereof, may by his warrant order the ſame to be levied by diſtreſs und ſale of his goods, and in ſuch caſe he ſhall not be allowed the ſame in his accounts. *ſ.* 1.

Note; This is another, and a quite different reward, from that which is given hereafter for apprehending rogues and vagabonds; the latter being 10 *s.* and this but 5 *s.* the latter paid by the county, but this paid by the pariſh, as a puniſhment for ſuffering their poor to beg, altho' within their own pariſh; for if they beg out of their pariſh, they incur a further degree of guilt, becoming thereby rogues and vagabonds.

II. Rogues and vagabonds.

An infant under the age of 7 years, ſhall not be ſaid to be a rogue and vagabond; but ſhall be removed to its place of ſettlement, as other poor perſons not vagrants. *Black.* 276.

But perſons who ſhall be deemed rogues and vagabonds, are by the 17 *G.* 2. *c.* 5. theſe that follow:

(1) All perſons going about as patent gatherers, or gatherers of alms, under pretences of loſs by fire, or other caſualty.

(2) Perſons going about as collectors for priſons, gaols, or hoſpitals.

(3) Fencers.

(4) Bearwards.

(5.) Common players of interludes, and all perſons who ſhall for hire, gain, or reward, act, repreſent, or perform, or cauſe to be acted, repreſented, or performed, any interlude, tragedy, comedy,

medy, opera, play, farce, or other entertainment of the ſtage, or any part therein, not being authorized by law.

(6) Minſtrels.

But this ſhall not prejudice the heirs or aſſigns of *John Dutton* of *Dutton*, late of the county of *Cheſter*, eſquire, their heirs or aſſigns, concerning the liberty, privilege, or inheritance, which they, their heirs or aſſigns now lawfully uſe, or ought to uſe within the county of *Cheſter*, by reaſon of any ancient charters of any kings of this land, or by reaſon of any preſcription, or lawful uſage, or title whatſoever.

And this exception is as ancient as the vagrant act of the 39 *El.* (now repealed).

And in the 43 *El. c.* 9. which continued the ſaid act of the 39 *El.* the above clauſe was continued only for one year, except before the end of the ſaid year, the ſaid *John Dutton*, or his heirs, ſhould procure the lords chief juſtices and lord chief baron, or two of them, on hearing his allegations and proofs, to make certificate into the chancery, to be there inrolled, that the ſaid *John Dutton*, or his heirs, ought lawfully (if no ſtatute againſt rogues or beggars had been made) by charter, tenure, or preſcription, to have ſuch liberty of licenſing of minſtrels, as he claimeth and uſeth.

And in the 1 *J. c.* 25. the ſame clauſe was continued without limitation; ſo that it is probable ſuch proof had then been made as is abovementioned.

And the hiſtory of the matter is this: *Randal Blandeville*, Earl of *Cheſter*, was about the end of the reign of K. *Rich.* the firſt, ſuddenly beſieged by the *Welſh*, in the caſtle of *Ruthelent* in *Flintſhire*; whereupon he preſently ſends to his conſtable of *Cheſhire*, one *Roger Lacy*, to haſten, with what force he could, to his relief. It happened to be on *Midſummer-day*, and a great fair then held at *Cheſter*. Whereupon *Roger* immediately got together a great lawleſs mob of fidlers, players, coblers, *&c.* and marches immediately towards the earl; and the *Welſh* perceiving a great multitude approaching, raiſed the ſiege and fled. The earl being thus freed, comes back with his conſtable to *Cheſter*; and in memory of this ſervice, by a charter grants to *Roger Lacy* and his heirs, power over all the fidlers, letchers, whores, and ſhoemakers in *Cheſter*. About the latter end of the reign of King *John*, or beginning of K. *Hen.* 3. *Roger Lacy* being dead, his ſon *John* by deed, granted to one *Hugh Dutton* his ſteward, and to his heirs, the rule and authority over all the letchers and whores in all *Cheſhire*, in theſe words; *Sciant præſentes & futuri, quod ego Johannes Conſtabularius Ceſtriæ, dedi & conceſſi, & hac præſenti charta mea confirmavi Hugoni de Dutton & hæredibus ſuis, magiſtratum omnium leccatorum & meretricum totius Ceſtriæ, ſic ut liberius illum magiſtratum teneo de comite, ſalvo jure meo mihi & hæredibus meis.* Under which grant by ancient cuſtom, the heirs of *Dutton* claim and enjoy a privilege and authority over all the common fidlers and miniſtrels in *Cheſter*, and in all *Cheſhire* to this day, and in memory thereof, keep a yearly court at *Cheſter* on *Midſummer-day*, being *Cheſter* fair, and in a ſolemn manner ride

attended

attended thro' the city to St. *John Baptist*'s church, with all the fidlers of the county playing before the lord of *Dutton*, and then at the court renew their licences yearly; and none ought to use the trade or employment of a minstrel or fidler, either within the city or county, but by an order and licence of that court. *Sh.* 360.

(7) Jugglers.

(8) All persons pretending to be gypsies, or wandring in the habit or form of *Egyptians*.

And by the 1 & 2 *P. & M. c.* 4. If any person shall bring into the realm any persons calling themselves, or commonly called *Egyptians*; he shall forfeit 40 *l.* half to the king, and half to him that shall sue. And if any of the said persons called *Egyptians*, so brought into the realm, shall continue within the same for one month, he shall (on conviction in the county where he was apprehended) be adjudged guilty of felony without benefit of clergy, and shall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child not above 13 years of age; nor to charge any person as accessary to the said felony.

And by the 5 *El. c.* 20. Every person (tho' not brought from beyond sea) who shall be found in any company of vagabonds, commonly called, or calling themselves *Egyptians*, or counterfeiting, transforming, or disguising themselves by their apparel, speech, or other behaviour like unto them, and shall continue in the same at one time, or at several times, by the space of one month, shall on conviction in the county where he was apprehended, be adjudged guilty of felony without benefit of clergy, and shall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child within 14 years of age.

(9) Or pretending to have skill in physiognomy, palmestry, or like crafty science, or to tell fortunes.

(10) Or using any subtil craft to deceive and impose on any of his majesty's subjects.

(11) Or playing or betting at any unlawful games or plays.

(12) All persons who run away, and leave their wives or children, whereby they become chargeable to any parish or place.

(13) All petty chapmen, and pedlars, wandring abroad, not being duly licensed, or otherwise authorized by law.

(14) All persons wandring abroad, and lodging in alehouses, barns, outhouses, or in the open air, not giving a good account of themselves.

(15) All persons wandring abroad and begging, pretending to be soldiers, mariners, or seafaring men.

But this shall not extend to soldiers wanting subsistence, having lawful certificates from their officers, or the secretary at war; or to mariners or seafaring men licensed by some testimonial or writing under the hand and seal of some justice of the peace, setting down the time and place of their landing or discharge, and the place to which they are to pass, and the names of the chief towns or places thro' which they are to pass, and limiting the time of their passage, while they continue in the direct way to the place to which they are to pass, and during the time so limited.

Which

Which exception hath a reference to the ſtatute of the 39 *El.* *c.* 17. which is as follows:

All idle and wandring ſoldiers or mariners, or idle perſons which ſhall be wandring as ſoldiers and mariners, ſhall ſettle themſelves in ſome ſervice, labour, or other lawful courſe of life, without wandring, or otherwiſe repair to the places where they were born, or to their dwelling places if they have any, and there remain, betaking themſelves to ſome lawful trade or courſe of life; on pain to be reputed as felons, and to ſuffer as in caſe of felony without benefit of clergy. *ſ.* 2.

And every idle and wandring ſoldier or mariner, which coming from his captain from the ſeas, or from beyond the ſea, ſhall not have a teſtimonial under the hand of a juſtice of the peace of or near the place where he landed, ſetting down therein the place and time when and where he landed, and the place of his dwelling or birth, unto which he is to paſs, and a convenient time therein limited for his paſſage, or having ſuch teſtimonial, ſhall wilfully exceed the time therein limited, above 14 days; and alſo as well every ſuch idle and wandring ſoldier or mariner, as every other idle perſon wandring as ſoldier or mariner, which ſhall forge or counterfeit any ſuch teſtimonial, or have with him any ſuch teſtimonial forged or counterfeited, knowing the ſame to be counterfeited or forged; in all theſe caſes, every ſuch act or acts to be felony without benefit of clergy. *ſ.* 3.

And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all ſuch offences, and execute the offenders convicted before them, as in caſes of felony is accuſtomed; except ſome honeſt perſon valued at the laſt ſubſidy to 10*l.* in goods, or 40*s.* in lands, or elſe ſome honeſt freeholder, as by the ſaid juſtics ſhall be allowed, will be contented before ſuch juſtices to take ſuch offender into his ſervice for one whole year, and then before the ſaid juſtices will be bound by recognizance of 10*l.* if he keep not the ſaid perſon for one whole year, and bring him to the next ſeſſions for the peace and gaol delivery next enſuing after the ſaid year; and if any ſuch perſon retained depart within the year, without the licence of him that ſo retained him, he ſhall be guilty of felony without benefit of clergy. *ſ.* 4.

But if any ſuch idle and wandring perſon ſhall fall ſick by the way, ſo that by reaſon of his weakneſs he cannot travel to his journey's end within the time limited in his teſtimonial, he ſhall not be within the danger of this ſtatute, ſo as he ſettle himſelf in ſome lawful courſe of life as aforeſaid, to repair as aforeſaid to the place where he was born or was laſt abiding, within convenient time after the recovery of his ſickneſs, and there remain as aforeſaid. *ſ.* 5.

And if any ſuch ſoldier or mariner coming from the ſeas, ſhall not at the time of his landing, or in his travel to the place whereunto he is to repair, going the direct way [have wherewithal to maintain himſelf in his journey], he may reſort to ſome juſtice next adjoining to the place of landing or way, and make known unto him his poverty; who upon perfect notice thereof had, may licenſe (B) him to paſs the next and direct way to the place

where

where he is to repair, and to limit him ſo much time only, as ſhall be neceſſary for his travel thither; and in ſuch caſe, purſuing the form of ſuch licence, he may for his neceſſary relief in his travel, aſk and take the relief that any perſon ſhall willingly give him. *ſ.* 7.

Note; the above words [*have wherewithal to maintain himſelf in his journey*] are inſerted in order to make up the ſenſe, the ſtatute being evidently imperfect without ſome ſuch like words; and the parliament roll itſelf in this place is in like manner imperfect: and yet this is the ſole clauſe in any act of parliament, by which power is given to a juſtice of the peace to licenſe any perſon to beg; and of which ſuch evil uſe is often made by profligate perſons, in counterfeiting ſuch licences, and thereby abuſing the country.

Lord *Coke*, upon this ſtatute, ſpeaking of the preventing of perſons from wandring without paſſes, or with the ſame counterfeited, obſerves thereupon, that this excellent work (as he calls it) of preventing them from wandring abroad without lawful licences, is without queſtion feaſible; for upon the making of the ſaid ſtatute, and a good ſpace after, whilſt the juſtices and other officers were diligent and induſtrious, there was not a rogue to be ſeen in any part of *England*; but when the juſtices and others became remiſs, rogues ſwarmed again. 2 *Inſt.* 729.

But, in truth, the great miſchief ſeemeth to be, the ſuffering theſe perſons to wander at all: Such perſons, above all others, ought to be conveyed immediately from their place of landing or diſcharge, to their place of ſettlement, at the publick charge, for three reaſons; 1. Becauſe, if they be ſailors, they may be uſeful at the ports where they belong. 2. Becauſe otherwiſe, whether they be ſoldiers or ſailors, they become initiated into the trade of begging, which they are never after willing to leave. 3. Becauſe being for the moſt part able and luſty, they are moſt likely to do miſchief in the country.

(16) Or pretending to go to work in harveſt.

But this ſhall not extend to any perſon going abroad to work at any lawful work in the time of harveſt, ſo as he carry with him a certificate ſigned by the miniſter and one of the churchwardens or overſeers where he ſhall inhabit, declaring that he hath a dwelling houſe or place there.

Which exception hath reference to a clauſe in the ſtatute of the 13 & 14 *C.* 2. *c.* 12. concerning ſettlements, by which 40 days inhabitancy made a ſettlement; whereby it is enacted, that it ſhall be lawful for any perſon to go into any county, pariſh, or place, to work in time of harveſt, or at any time to work at any other work, ſo that he carry with him a certificate from the miniſter of the pariſh, and one churchwarden and one overſeer, that he hath a dwelling houſe or place in which he inhabiteth, and hath left wife and children, or ſome of them there (or otherwiſe as the condition of ſuch perſon requireth) and is declared an inhabitant there; and in ſuch caſe, if he ſhall not return when his work is finiſhed, or ſhall fall ſick or impotent, it ſhall not be accounted a ſettlement.

(17) And

(17) And all other persons, wandring abroad and begging—— shall be deemed rogues and vagabonds.

III. Incorrigible rogues.

By the 17 *G.* 2. *c.* 5. Incorrigible rogues are thus described:

(1) All end gatherers offending against the statute of the 13 *G.* being convicted of such offence.

By which act of the 13 *G.* *c.* 23. *s.* 8. The offence is this; *viz.* The collecting, buying, receiving, or carrying any ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods; and the punishment of such persons is, in order to prevent their committing abuses, by such practices, in the woollen manufacture.

(2) All persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice, or to be examined on oath before such justice, or refusing to be conveyed by such pass as is herein after directed, or knowingly giving a false account of themselves on such examination, after warning given them of their punishment.

(3) All rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by this act.

(4) All persons who after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences: — All these shall be deemed incorrigible rogues. *s.* 4.

IV. Apprehending rogues.

If any person shall be found offending against this act, the constable shall apprehend him, and convey or cause him to be conveyed to a justice of the peace. 17 *G.* 2. *c.* 5. *s.* 5.

And any other person *may* apprehend him, and carry him to the constable, or to a justice. *id.*

V. Reward for apprehending.

If any person, not being a constable, shall apprehend any such rogue or vagabond, and shall deliver him to a constable, or convey him to a justice; or if any constable shall so apprehend and convey him, it shall be lawful for such justice to reward him, by making an order (C) under hand and seal, upon the high constable, to pay 10*s.* to the person so apprehending him, within one week after demand, and producing such order, and on his giving a receipt for the same; which shall be allowed by the treasurer to such high constable, on passing his accounts, and delivering such order and receipt, and also his own receipt for the same to such treasurer; the treasurer also to be allowed the same in his accounts, on producing the said vouchers; and in towns corporate, and other places, where there are no high constables, such petty constables shall pay or retain such reward, and be allowed the same in their accounts, on producing the like vouchers. And

if any high conſtable, or where there is none, ſuch petty conſtable, ſhall refuſe or neglect to pay ſuch reward on demand, ſuch juſtice by his warrant may levy the ſum of 20*s.* by diſtreſs and ſale of his goods, and thereout allow the ſaid reward, and ſuch other recompence for his trouble, loſs of time, and expences, as the ſaid juſtice ſhall think fit; the overplus to be returned on demand. 17 *G.* 2. *c.* 5. *ſ.* 5.

VI. Penalty for not apprehending.

If the conſtable ſhall refuſe or neglect, to uſe his beſt endeavours, to apprehend or convey to ſome juſtice ſuch offender; or if any other perſon, being charged by any juſtice ſo to do, ſhall refuſe or neglect to uſe his beſt endeavours to apprehend and deliver to the conſtable, or to carry ſuch offender before ſome juſtice, where no conſtable can be found; he ſhall, being convicted thereof on view, or oath of one witneſs, before one juſtice, forfeit 10*s.* to the poor, by diſtreſs. 17 *G.* 2. *c.* 5. *ſ.* 5.

VII. Privy ſearch.

The juſtices, or two of them, ſhall four times a year at leaſt, or oftner (if need be) meet in their reſpective diviſions, and by their warrant (D) command the conſtables of every hundred, pariſh, town, and hamlet, who ſhall be aſſiſted with ſufficient men, to make a general privy ſearch in one night, for the apprehending of rogues and vagabonds; and every juſtice ſhall alſo, on receiving information that rogues and vagabonds are in any place within his juriſdiction, iſſue his warrant to the conſtable to ſearch for and apprehend ſuch rogues and vagabonds, and ſuch as they ſhall find upon ſuch ſearch, they ſhall cauſe to be brought before a juſtice. 17 *G.* 2. *c.* 5. *ſ.* 6.

And by the 25 *G.* 2. *c.* 36. Two juſtices, in caſe any perſon apprehended upon a general privy ſearch, or by a ſpecial warrant, ſhall be charged before them with being a rogue and vagabond, or an idle and diſorderly perſon, or with ſuſpicion of felony (altho' no direct proof be then made thereof) may examine ſuch perſon on oath, as to his ſettlement, and means of livelihood; and the ſubſtance of ſuch examination ſhall be put in writing, and ſigned by ſuch perſon, and by the juſtices, and be tranſmitted to the next ſeſſions to be filed; and if ſuch perſon ſhall not ſhew, that he has a lawful way of getting his livelihood, or ſhall not procure ſome reſponſible houſekeeper to appear to his character, and to give ſecurity (if required) for his future appearance at ſome other day to be fixed for that purpoſe, the juſtices may commit him to ſome priſon or houſe of correction, for any time not exceeding ſix days; and in the mean time order the overſeers of the poor, to advertiſe in ſome publick paper, a deſcription of his perſon, and any thing that ſhall be found on him, or in his cuſtody, and which he ſhall be ſuſpected not to have come honeſtly by, and the place of his commitment, and the time and place appointed for

for his re-examination; and if no accusation shall be then laid against him, he shall be discharged, or otherwise dealt with according to law. *s.* 12.

But by the shortness of the time limited for advertising him, this seems chiefly calculated for the places within the bills of mortality.

VIII. Examination.

Where any rogues or vagabonds, apprehended by any constable, or such other person as aforesaid, shall be brought before a justice, he shall inform himself by the examination (E) upon oath of the person apprehended, or of any other person, of the condition and circumstances of the person so apprehended, and of the parish or place where he was last legally settled; the substance of which shall be put into writing, and be signed by the person or persons so examined; and the justice shall likewise sign the same, and transmit it to the next sessions, there to be filed and kept on record. 17 *G.* 2. *c.* 5. *s.* 7.

IX. Whipping or imprisonment.

And such justice shall order such person so apprehended, to be publickly whipt (F) by the constable, petty constable, or some other person, to be appointed by such constable or petty constable, of the parish or place, where such person was apprehended; or shall order him to be sent to the house of correction (G) till the next sessions, or for any less time, as such justice shall think proper. 17 *G.* 2. *c.* 5. *s.* 7.

X. Further punishment.

And where any offender against this act shall be committed to the house of correction till the next sessions, and the justices at such sessions shall on examination of the circumstances of the case adjudge such person a rogue or vagabond, or an incorrigible rogue; they may order such rogue or vagabond to be detained in the house of correction, to hard labour for any further time not exceeding six months, and such incorrigible rogue for any further term not exceeding two years, nor less than six months; and during his confinement, to be whipped in such manner, and at such times and places, as they shall think fit; and such person may, if the sessions think convenient, afterwards be sent away by a pass; and if such person, being a male, is above the age of 12 years, the court may, before he is discharged from the house of correction, send him to be employed in his majesty's service by sea or land; and if such incorrigible rogue, so ordered by the sessions to be detained in the house of correction, shall break out or make his escape, or shall offend again in like manner, he shall be guilty of felony, and be transported for seven years. 17 *G.* 2. *c.* 5. *s.* 9.

And by the 13 & 14 C. 2. c. 12. The juſtices in ſeſſions may tranſport ſuch rogues, vagabonds, and ſturdy beggars, as ſhall be duly convicted, and adjudged to be incorrigible. ſ. 23.

And by the 17 G. 2. c. 5. If the child of any vagrant, above the age of ſeven years, ſhall be committed to the houſe of correction, the juſtices in ſeſſions, if they ſee convenient, at any time before ſuch child be diſcharged, may order ſuch child to be placed out as a ſervant or apprentice, to any perſon who is willing to take ſuch child, till ſuch child ſhall be of the age of 21 years, or for a leſs time: And if any offender, who was found wandring with ſuch child, ſhall be again found with the ſame child which was ſo placed out, he ſhall be deemed an incorrigible rogue. ſ. 24.

And where any vagrants have been committed to the houſe of correction till the next ſeſſions, if on examination of ſuch perſons no place can be found, to which they may be conveyed, the ſeſſions ſhall order them to be detained and employed in the houſe of correction, until they can provide for themſelves, or until the juſtices in ſeſſions can place them in ſome lawful calling, as ſervants, apprentices, ſoldiers, mariners, or otherwiſe, either within this realm, or in the plantations in *America*. ſ. 28.

XI. Conveying.

After ſuch whipping or confinement, the juſtice may, if he thinks convenient, by a paſs (H. I.) under hand and ſeal, cauſe him to be conveyed to the place of his laſt legal ſettlement; but if it cannot be found, then to the place of his birth; or if he be under the age of 14 years, and have any father or mother living, then to the place of the abode of ſuch father or mother, there to be delivered to ſome churchwarden or overſeer. 17 G. 2. c. 5. ſ. 7.

And the juſtice ſhall make a duplicate of the paſs and examination, and ſign the ſame; and ſhall afterwards tranſmit the duplicate of the paſs, annexed to the examination, to the next ſeſſions, there to be filed and kept on record; and ſhall annex the duplicate of the examination to the paſs, and ſend it with the ſame; and the ſaid paſs, examination, and duplicate thereof, ſhall and may be read in any court of record as evidence. ſ. 8.

And the juſtice who ſhall make the paſs, ſhall with the paſs cauſe likewiſe to be delivered to the conſtable a note or certificate (K) aſcertaining how they are to be conveyed, by horſe, cart, or on foot, and what allowance ſuch conſtable is to have for conveying them. ſ. 10.

And the conſtable who ſhall receive ſuch paſs and certificate, ſhall convey the perſon according to the direction of the paſs, the next direct way to the place where he is ordered to be ſent, if it be in the ſame county, riding, diviſion, corporation, or franchiſe; if not, he ſhall deliver the ſaid perſon to the conſtable of the firſt town, pariſh, or place, in the next county, riding, diviſion, corporation, or franchiſe, in the direct way to the place whither he is to be conveyed, together with the paſs and dupli-

cate of the examination, taking his receipt for the ſame. And ſuch conſtable ſhall without delay apply to ſome juſtice in the ſame county or diviſion, who ſhall make the like certificate, and deliver it to ſuch conſtable, who ſhall with all ſpeed convey ſuch perſon unto the firſt pariſh, town, or place in the next county or diviſion, in the direct way to the place to which he is to be conveyed. And ſo from one county or diviſion to another, till they come to the place to which ſuch perſon is ſent. And the conſtable, who ſhall deliver ſuch perſon to the churchwarden or other perſon ordered to receive him, ſhall at the ſame time deliver the ſaid paſs, with the duplicate of the examination, taking their receipt for the ſame. *ſ.* 11.

And any juſtice before whom a vagrant ſhall be carried, may order him to be ſearched, and his bundles to be inſpected by the conſtable or other officer in his preſence; and if it ſhall appear that ſuch vagrant ſhall be found to have ſufficient wherewithal to pay for his paſſage, either in whole or in part, the juſtice ſhall order ſo much of the money to be paid, or other effects found upon ſuch vagrant to be ſold, and employed towards the expence of taking up and paſſing ſuch vagrant, returning the overplus, after deducting the charges of ſuch ſale. *ſ.* 12.

And the juſtices in ſeſſions ſhall limit what rates and allowances, by the mile, or otherwiſe, ſhall be made, for conveying or maintaining rogues, vagabonds, or incorrigible rogues; and make ſuch other orders for the more regular proceeding therein, as they ſhall think proper. *ſ.* 16.

And if any petty conſtable ſhall bring to any high conſtable ſuch certificate as aforeſaid, together with a receipt or note from the conſtable to whom the perſon was delivered, the ſaid high conſtable ſhall pay the rates aſcertained by ſuch certificate, taking the petty conſtable's receipt; the high conſtable to be allowed the ſame by the treaſurer on paſſing his accounts, on his delivering up ſuch certificate and receipt, and giving his own receipt for the ſame to ſuch treaſurer; the ſame to be allowed the treaſurer in his accounts, on his delivering up the vouchers aforeſaid. And if the high conſtable ſhall refuſe or neglect to pay the ſame on demand, it ſhall be lawful for one juſtice, by his warrant, to levy double the ſum by diſtreſs, and thereout to allow the petty conſtable the ſum aſcertained by the certificate, and ſuch other recompence for his trouble, loſs of time, and expences, as the juſtice ſhall think fit; the overplus to be returned to the high conſtable on demand. And in cities, towns corporate, and other places where there is no high conſtable, the petty conſtable ſhall be allowed what he ſhall ſo pay purſuant to ſuch certificate, in his accounts, on delivering up ſuch vouchers: Or if any maſter of a houſe of correction ſhall deliver ſuch certificate and receipt to the treaſurer, the treaſurer ſhall pay the ſame to him, taking his receipt for the ſame, and be allowed the ſame in his accounts, on delivering up ſuch vouchers. *ſ.* 17.

And by the 26 *G.* 2. *c.* 34. Where the high conſtable hath not money in his hands ſufficient to anſwer the ſaid expences, the treaſurer ſhall pay the ſame to ſuch petty conſtable, on his

producing the certificate, and ſuch other vouchers as aforeſaid. *ſ.* 2.

And if any petty conſtable, or governor of any houſe of correction, ſhall counterfeit any ſuch certificate or receipt, or knowingly permit any alteration to be made therein; he ſhall forfeit 50*l.* And if he ſhall not convey, or cauſe to be conveyed, ſuch vagrants, or not deliver them to the proper perſon; or if any conſtable ſhall refuſe to receive any ſuch perſon, or to give ſuch receipt, he ſhall forfeit 20*l.* by diſtreſs and ſale by warrant of the juſtices in ſeſſions, where the offence ſhall be committed; half to the informer, and half to the treaſurer, to be applied by him as part of the publick ſtock; returning the overplus upon demand, charges of diſtreſs being firſt ſatisfied. 17 *G.* 2. *c.* 5. *ſ.* 18.

XII. What to be done with at the place to which he is ſent.

The pariſh or place to which any rogue, vagabond, or incorrigible rogue ſhall be conveyed, ſhall employ in work, or place in ſome workhouſe or almſhouſe, the perſon ſo conveyed, until he ſhall betake himſelf to ſome ſervice or other employment: And if he ſhall refuſe to work, or not betake himſelf to ſome ſervice or other employment, the overſeers may cauſe him to be carried to ſome juſtice, to be ſent to the houſe of correction, there to be kept to hard labour. 17 *G.* 2. *c.* 5. *ſ.* 19.

But if the churchwarden or other perſon who ſhall receive any perſon ſo ſent, ſhall think the examination to be falſe, he may carry the perſon ſo ſent before a juſtice, who if he ſee cauſe, may commit ſuch perſon to the houſe of correction till the next ſeſſions; and the juſtices there, if they ſee cauſe, may deal with ſuch perſon as an incorrigible rogue: But the perſon ſo ſent, ſhall not be removed from the place to which ſent, but by order of two juſtices, in the ſame manner as other poor perſons are removed to the place of their ſettlement. *ſ.* 11.

XIII. Scottiſh *vagrants.* (L.)

The conſtable of any pariſh or place, within the counties of *Cumberland*, *Northumberland*, *Durham*, or town of *Berwick*, ſhall on any perſon being ſo delivered to him by a paſs and examination, whoſe place of legal ſettlement is in *Scotland*, deliver the examination to the clerk of the peace, to be kept amongſt the records; and convey ſuch perſon with the paſs, into the next adjoining ſhire, ſtewartry, or place, in that part of the united kingdom, and deliver him to ſome conſtable or other officer of the next pariſh, diſtrict, or place within the ſaid ſhire, ſtewartry, or place, taking his receipt for him; and ſuch officer ſhall receive ſuch perſon, and give ſuch receipt, and diſpoſe of him according to law. And if any ſuch vagrant, after being ſo conveyed into *Scotland*, ſhall be found wandring, begging, or miſbehaving himſelf in *England*, he ſhall be deemed an incorrigible rogue. 17 *G.* 2. *c.* 5. *ſ.* 13.

XIV. Iriſh

XIV. Irish *vagrants.* (M.)

Every master of a vessel bound for *Ireland*, the *Isles of Man*, *Jersey*, *Guernsey*, or *Scilly*, shall on warrant to him directed, under the hand and seal of a justice of the place where such vessel shall lie (N.), take on board such vagrant as shall be expressed in the warrant, and convey him to such place; and for the charges thereof, the constable who serves him with the warrant, shall pay him such rate by the head, as the justices in sessions shall appoint; and such master shall on the back of the warrant sign a receipt for the money so paid, and also for the vagrant so delivered. Which warrant so indorsed shall be produced to the justice who signed and sealed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county, as other money for conveying vagrants. And such master neglecting or refusing to transport such vagrants, or to indorse such receipt, shall forfeit 5 *l.* to the poor of the parish or place where the offence shall be committed, to be levied by distress and sale of the ship, or any goods within the same, by warrant of one justice, returning the overplus on demand, after the penalty and charges of the same are satisfied. 17 *G.* 2. *c.* 5. *s.* 14.

But no master shall be compelled to take on board more than one vagrant, for every 20 tons burden. *s.* 15.

XV. Lunatick vagrants.

Whereas there are sometimes persons, who by lunacy or otherwise, are furiously mad, or so far disordered in their senses, that they may be dangerous to be permitted to go abroad, it shall be lawful for two justices where such person shall be found, by their warrant (O.) directed to the constables, churchwardens, and overseers, or some of them, to cause such person to be apprehended, and kept safely locked up in some secure place within the county, or precinct, as such justices shall appoint; and, if such justices find it necessary, to be there chained, if the settlement of such person be within such county or precinct; and if not, then to be sent to the place of his last legal settlement by a pass, *mutatis mutandis*, and shall be locked up or chained, by warrant of two justices of the place to which he is sent: And the reasonable charges of removing, and of keeping, maintaining and curing such person, during such restraint (which shall be during such time only as such lunacy or madness shall continue) shall be paid, such charges being first proved upon oath, by order of two justices (P.) directing the churchwardens or overseers where any goods, chattels, lands, or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands and tenements, as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next sessions: But if such person hath not an estate to pay the same, over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town, or place, to

which ſuch perſon belongs, by order of two juſtices, directed to the churchwardens and overſeers for that purpoſe. 17 *G.* 2. *c.* 5. *ſ.* 20.

But this ſhall not extend to reſtrain the king's prerogative, or power of the lord chancellor, or the chancellor of the county palatine of *Lancaſter*, or the chamberlain of the county palatine of *Cheſter*, concerning ſuch lunaticks; or to reſtrain or prevent any friend or relation of ſuch lunaticks, from taking them under their own care and protection. *ſ.* 21.

XVI. Penalty of lodging vagrants.

If any perſon ſhall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take ſhelter in his houſe, barn, or other outhouſe or building, and ſhall not apprehend and carry him before a juſtice, or give notice to the conſtable ſo to do; and ſhall be convicted thereof by confeſſion, or oath of one witneſs, before one juſtice; he ſhall forfeit not exceeding 40 *s.* nor leſs than 10 *s.* half to the informer, and half to the poor, by diſtreſs and ſale. And if any charge ſhall be brought on any pariſh or place, by means of ſuch offence, the ſame ſhall be anſwered to the ſaid pariſh or place by ſuch offender, and be levied by diſtreſs and ſale of his goods as aforeſaid; and if ſufficient diſtreſ cannot be found, ſuch offender ſhall be committed to the houſe of correction by the juſtice, for any time not exceeding one month. 17 *G.* 2. *c.* 5. *ſ.* 23.

XVII. Children born in vagrancy.

Whereas women wandring and begging are often delivered of children, in pariſhes and places to which they do not belong, whereby they become chargeable to the ſame, it is enacted, that where any ſuch woman ſhall be ſo delivered, and become chargeable, the churchwardens or overſeers may detain ſuch woman in their cuſtody, until they can ſafely convey her to a juſtice; who ſhall examine her, and commit her to the houſe of correction until the next ſeſſions, who may, if they ſee convenient, order her to be publickly whipped, and detained in the houſe of correction for any further time not exceeding ſix months. And upon application by the churchwardens and overſeers of the place where ſhe was ſo delivered, the juſtices at ſuch ſeſſions ſhall order the treaſurer to pay them ſuch a ſum, as ſhall be adjudged a reaſonable ſatisfaction for the charges ſuch place has been put to on ſuch woman's account. And if ſuch woman ſhall be detained and conveyed to a juſtice as aforeſaid, the child of which ſhe is delivered, if a baſtard, ſhall not be ſettled in the place where ſo born, nor be ſent thither for want of other ſettlement, by a paſs, by virtue of this act; but the ſettlement of ſuch woman ſhall be deemed the ſettlement of ſuch child. 17 *G.* 2. *c.* 5. *ſ.* 25.

And that it may appear, that the overſeers have done what was incumbent upon them, in order to avoid ſuch ſettlement, it is requiſite for the juſtice (as he ought to do in all other caſes wherein

he

he acteth as judge) to make a record (Q.) of the whole proceedings before him; which record (as it seemeth) will be the proper evidence in such case, if the settlement shall afterwards be contested.

XVIII. General penalty for hindring the execution of the vagrant act.

If any constable, or other officer, or governor of any house of correction, shall be defective in his duty, in any case for which no punishment is herein before particularly provided; or if any person shall hinder the execution of this act; or shall rescue any person apprehended or passing from place to place by virtue thereof; or shall be advising, aiding, or assisting to his escape; and shall be thereof convicted, on oath of one witness, before one justice, he shall forfeit not exceeding 5 *l.* nor under 10 *s.* to the poor, by distress; and if sufficient distress cannot be found, to be committed to the house of correction, to be kept to hard labour, not exceeding two months. 17 *G.* 2. *c.* 5. *s.* 22.

XIX. Charges of maintaining and conveying vagrants.

To defray the expences of apprehending, conveying, and maintaining rogues, vagabonds, and incorrigible rogues, and defraying all other expences necessary for the execution of this act, not herein before provided for, the justices in sessions may cause such sums as shall be necessary, to be raised in the same manner as the general county rate. 17 *G.* 2. *c.* 5. *s.* 33.

XX. Appeal.

Any person aggrieved by any act of any justice out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty, or division, giving reasonable notice thereof; whose order thereupon shall be final. 17 *G.* 2. *c.* 5. *s.* 26.

XXI. Treble costs.

Persons sued for any thing done in the execution of this act, may plead the general issue; and if they recover, shall have treble costs. 17 *G.* 2. *c.* 5. *s.* 34.

XXII. Exception of special franchises.

In all cities and towns, where by virtue of special acts of parliament, the charge of passing vagrants is to be defrayed in other manner than is by this act directed; or where such vagrants, by virtue of special statutes, are to be apprehended and conveyed by any person or officer, other than those named in this act, the same shall not be altered hereby: And persons conveyed in *London*, shall

shall not be delivered in any other precinct within the city, but in the next county. 17 *G.* 2. *c.* 5. *s.* 27.

A. Order upon the overseer to pay 5*s.* for apprehending a person begging in his own parish.

Westmorland. { To the overseers of the poor of the parish of ——— in the said county.

WHEREAS *it duly appears unto me* John Moore, *esquire, one of his majesty's justices of the peace in and for the said county, that* A. O. *of* ——— *in the parish of* ——— *in the said county, an idle and disorderly person, did on the* ——— *day of* ——— *go about from door to door* [or, *place himself in the streets, highways, and passages*] *in the said parish, to beg and gather alms there; and was then and there apprehended in the said parish of* ——— *by* A. A. *an inhabitant of the said parish, and was by him brought before me in order to be dealt withal according to law: I do hereby order you, or some, or one of you, to pay unto the said* A. A. *the sum of* 5 s. *on demand, as a reward for apprehending the said* A. O. *he producing and delivering to you this order, and giving to you a receipt for the said sum. Given under my hand and seal, at* Grimeshill *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

B. Mariner's licence to pass unapprehended.

Westmorland. { To all constables and others whom it may concern.

WHEREAS *it appeareth unto me* George Stephenson, *esquire, one of his majesty's justices of the peace for the said county, that* A. M. *mariner, did on the* ——— *day of* ——— *land at* ——— *in the said county, and that he hath nothing wherewithal to relieve himself, and that his lawful place of abode is at* ——— *I do hereby license him to pass in* ——— *days time, through the towns of* ——— *and* ——— *in the direct way to* ——— *aforesaid; and to ask and take such relief in his travel in such direct way as aforesaid as any person shall willingly give him. Given under my hand and seal, at* Warcopp *in the said county, the* ——— *day of* ——— *in the year of our lord* ——— .

C. Order for payment of 10*s.* for apprehending a vagrant.

Westmorland. { To the high constable of ———

WHEREAS *it duly appeareth unto me* John Thomson, *esquire, one of his majesty's justices of the peace for the said county, that* A. R. *a rogue and vagabond, was found wandring and begging* [or, as the case shall be] *in the parish of* ——— *in the said county; which said* A. R. *was this day brought before me by* A. I.

of

of ——— yeoman, in order to be dealt withal according to law: I do hereby order you to pay unto the said A. I. *as a reward for apprehending and bringing before me the said rogue and vagabond, the sum of* 10s. *within one week after demand thereof made, upon his producing and delivering to you this order, and giving unto you his receipt for the said sum. Given under my hand and seal, at* Brough *in the said county, the ——— day of ———*

D. Warrant for privy search.

Westmorland { To the high constable of *Lonsdale Ward* within the said county.

AT *a meeting of the justices of our lord the king assigned to keep the peace within the said county, held at ——— for the division of* Lonsdale Ward *aforesaid, this ——— day of ——— in the ——— year of the reign of ——— by us ——— esquires, two of the said justices, assembled at the said meeting, being resident, living, and dwelling within the said division:*

We do hereby command you forthwith to issue your warrants to all the petty constables within your said Ward, for the making of a general privy search for rogues and vagabonds, according to the form hereon indorsed. Given under our hands and seals at ——— aforesaid in the county aforesaid, the day and year aforesaid.

The form of the said high constable's warrant.

Westmorland, Lonsdale Ward { To the constable of ———

BY *virtue of a precept from his majesty's justices of the peace for the said county, acting in and for the said Ward, at their special meeting for that purpose assembled, you are hereby required in his said majesty's name, commanding and taking to your assistance sufficient men within your constablewick (who are hereby required to assist you accordingly), to make a general privy search, in the night of the ——— day of ——— throughout your said constablewick, for the finding and apprehending of rogues and vagabonds: And such as you shall so find upon such search, you are to carry forthwith before some of his said majesty's justices of the peace for the said county, to be dealt withal according to law. Herein fail you not. Given under my hand the ——— day of ——— in the year of our lord ———*

Edward Cooke, *high constable.*

E. Examination of a vagrant.

Westmorland. THE *examination of* A. O. *a rogue and vagabond, taken on oath before me ——— one of his majesty's justices of the peace in and for the said county, the ——— day of ——— in the ——— year of the reign of ———*

Who

Who on his oath saith, That he was born at ——— [and so trace out the history of his life, so far forth as to ascertain his legal place of settlement.] A. O.

Taken and signed the day and year above written, before me the abovesaid † his mark.

J. P.

F. Warrant to the constable for whipping a vagrant.

Westmorland { To the constable of———

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging, in the parish of* ——— *in the said county, not having obtained any legal settlement there, and was thereupon apprehended, and is now brought before me* Hugh Robinson, *clerk, one of the justices of our lord the king, assigned to keep the peace within the said county, that he may be punished and dealt withal according to law: These are therefore to command you to strip, or cause to be stripped, the said* A. O. *naked from the middle upwards, and to whip him or cause him to be publickly whipped at the common whipping post in your said parish; and afterwards to remove and convey the said* A. O. *according to the directions of the pass herewith delivered to you. Given under my hand and seal, at* Lowther *in the said county, the* ——— *day of* ——— *in the* ——— *year* ———

G. Commitment of a vagrant to the house of correction.

Westmorland. { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging in the parish of* ——— *in the said county, not having obtained any legal settlement there, and was thereupon apprehended, and is now brought before me* Richard Burn, *clerk, one of the justices of our lord the king, assigned to keep the peace within the said county, that he may be punished and dealt withal according to law: These are therefore to command you the said constable, to carry the said* A. O. *to the said house of correction, and deliver him to the said keeper thereof, together with this warrant: And I do hereby command you the said keeper to receive the said* A. O. *into your custody in the said house of correction, and him there safely to keep until the next general quarter sessions of the peace to be holden for the said county: And have you him then there, together with this precept. Given under my hand and seal at* Orton *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

H. Vagrant paſs within the ſame juriſdiction.

Weſtmorland { To the conſtable of ——— in the ſaid county, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of ——— in the ſaid county, or either of them, to receive and obey.

WHEREAS A. O. *was apprehended within the conſtablewick of* ——— *aforeſaid, in the county aforeſaid, as a rogue and vagabond,* videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county (which examination is hereunto annexed) it doth appear, that* ——— *Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *in the next direct way to the ſaid pariſh of* ——— *within the ſaid county, and there to deliver him to ſome churchwarden, chapelwarden, or overſeer of the poor of the ſame pariſh of* ——— *to be there provided for according to law. And you the ſaid churchwardens, chapelwardens, and overſeers of the poor, are hereby required to receive the ſaid perſon, and provide for him as aforeſaid. Given under my hand and ſeal the* ——— *day of* ——— *in the year of our lord* ———

I. Vagrant paſs from county to county.

Weſtmorland { To the conſtable of ——— in the ſaid county of W. and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of ——— in the county of ——— or either of them, to receive and obey.

WHEREAS A. O. *was apprehended in the townſhip of* ——— *aforeſaid in the county of* W. *aforeſaid, as a rogue and vagabond,* videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *upon oath (which examination is hereunto annexed) it doth appear, that* ——— *Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *to the town of* ——— *in the county of* ——— *that being the firſt town in the next precinct through which he ought to paſs in the direct way to the ſaid pariſh of* ——— *in the county of* ——— *to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs, and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame. And the ſaid* A. O. *is to be thence conveyed on in like manner to the ſaid pariſh of* ——— *in the county of* ——— *there to be delivered to ſome of the churchwardens or overſeers of the poor of the ſame pariſh of* ——— *to be there provided for according to law. And you the ſaid churchwardens, chapelwardens, and overſeers of the poor are hereby*

hereby required to receive the ſaid perſon, and provide for him as aforeſaid. Given under my hand and ſeal the ——— *day of* ——— *in the year of our lord* ———.

K. The certificate, according to the directions of the ſtatute, ſhall be in the form, or to the effect following;

WHEREAS *by a paſs* (reciting the ſubſtance or effect of the ſaid paſs) *I* (or *we*) *do hereby order and direct the ſaid perſon* (or *perſons*) *to be conveyed on foot* (or, *in a cart*, or *by horſe*, &c.) *to the ſaid town*, (or *pariſh*) *of* ——— *in* ——— (or other place, deſcribing it) *in the way to ſuch pariſh* (*town*, or *place*, as the caſe ſhall be) *in* ——— *days time*; *for which the ſaid conſtable* (&c.) *is to be allowed the ſum of* ——— *and no more. Given under my hand* (or *our hands*) *this* ——— *day*, &c.

L. Vagrant paſs to *Scotland*.

Weſtmorland. { To the conſtable of ——— in the ſaid county of *W.* and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to all conſtables and other officers within that part of *Great Britain* called *Scotland*, whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of* ——— *aforeſaid in the county of* W. *aforeſaid, as a rogue and vagabond*, videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *upon oath* (*which examination is hereunto annexed*) *it doth appear, that his lawful place of ſettlement is in that part of* Great Britain *called* Scotland: *Theſe are therefore to require you the ſaid conſtable of* ——— *aforeſaid in the county of* W. *aforeſaid, to convey the ſaid* A. O. *to the town of* ——— *in the county of* ——— *that being the firſt town in the next precinct through which he ought to paſs in the direct way to that part of* Great Britain *called* Scotland *aforeſaid, to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs, and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame. And the ſaid* A. O. *is to be thence conveyed on in like manner into the next adjoining ſhire, ſtewartry, or place, in that part of* Great Britain *called* Scotland *aforeſaid, and is there to be delivered to ſome conſtable or other officer of the next pariſh, diſtrict, or place within ſuch next adjoining ſhire, ſtewartry or place aforeſaid, taking his receipt for the ſame. And ſuch next officer in that part of* Great Britain *called* Scotland *aforeſaid, is hereby required to receive the ſaid* A. O. *and give ſuch receipt as aforeſaid, and to diſpoſe of him the ſaid* A. O. *according to law. Given under my hand and ſeal this* ——— *day of* ——— *in the year of our lord* ———.

M. Vagrant pafs to *Ireland.*

Weftmorland. { To the conftable of ——— in the faid county; and alfo to all conftables and other officers whom it may concern, to receive and convey; and to all other officers of the peace whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of* ——— *in the faid county as a rogue and vagabond,* videlicet, ——— *and upon examination of the faid* A. O. *taken before me* J. P. *efquire, one of his majefty's juftices of the peace in and for the faid county upon oath (which examination is hereunto annexed) it doth appear, that the lawful fettlement of him the faid* A. O. *is in the kingdom of* Ireland: *Thefe are therefore to require you the faid conftable of* ——— *to convey the faid* A. O. *to the town of* ——— *in the county of* ——— *that being the firft town in the next precinct through which he ought to pafs, in the direct way to the faid kingdom of* Ireland, *to which he is to be fent, and to deliver him to the conftable or other officer of fuch firft town in fuch next precinct, together with this pafs and the duplicate of the examination of the faid* A. O. *taking his receipt for the fame. And the faid* A. O. *is to be thence conveyed on in like manner, until he fhall arrive in the county of* ———, *and the conftable or other officer to whom he fhall be delivered in the faid county of* ——— *is hereby required to apply to fome juftice of the peace in and for the faid county of* ——— *for a warrant to the mafter of any fhip or veffel bound for the faid kingdom of* Ireland, *that fhall lie in the faid county of* ——— *to take on board the faid fhip or veffel him the faid* A. O. *and convey him to fuch place in the faid kingdom of* Ireland, *as fuch fhip or veffel fhall be bound unto. Given under my hand and feal the* ——— *day of* ——— *in the year of our lord* ———.

N. Warrant to a mafter of a fhip to export a vagrant.

Weftmorland. { *J. P.* efquire, one of the juftices of our lord the king, affigned to keep the peace within the faid county, To *A. M.* mafter of the fhip called the ——— of ——— now lying or being at ——— and bound for ——— in the kingdom of *Ireland,* fendeth greeting.

THESE *are in the name of our faid lord the king to require you to take on board the faid fhip,* A. O. *and* B. O. *vagrants, both of them being natives of the kingdom of* Ireland *aforefaid, and having no fettlement in* England, *and them to convey to* ——— *aforefaid, in the kingdom of* Ireland *aforefaid, or to fuch other place in that kingdom as you fhall arrive at; and for the charges thereof you fhall take, and* A. C. *conftable of* ——— *at the*

the time he ſhall ſerve you with this warrant, ſhall pay, and it hereby required to pay unto you the ſum of ——— in the whole, that is, at the rate of ——— head for each of the ſaid vagrants ſo to be delivered unto you, the ſame being the rate laſt appointed by the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, at their general quarter ſeſſions of the peace held in and for the ſaid county. And you are on the back of this warrant, to ſign a receipt for the money ſo paid, and alſo for the ſaid vagrants ſo delivered unto you. Given under my hand and ſeal, at ——— in the ſaid county, the ——— day of ——— in the ——— year ———.

O. Warrant to ſecure a lunatick.

Weſtmorland. { To the conſtables, churchwardens, and overſeers of the poor of ———

WHEREAS *it hath been proved before us ——— two of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, upon the oaths of* A. W. *and* B. W. *both of the pariſh of ——— in the county aforeſaid, gentlemen, that* A. L. *late of ——— frequently goeth at large in the ſaid pariſh of ——— and that he the ſaid* A. L. *is by lunacy ſo far diſordered in his ſenſes, that he is dangerous to be permitted to go abroad, and that his legal ſettlement is in the pariſh of ——— These are therefore to authorize and require you, and every of you, to cauſe the ſaid* A. L. *to be apprehended and kept ſafely locked up in the houſe of* A. K. *at ——— in the ſaid county, the ſaid* A. K. *being willing to keep and entertain him the ſaid* A. L. *for a reaſonable allowance in that behalf, and the ſaid houſe being a ſecure place: And the ſaid* A. L. *is to be kept ſo locked up only ſo long as ſuch lunacy or diſorder ſhall continue, and no longer. Given under our hands and ſeals, at ——— in the ſaid county, the ——— day of ———.*

P. Order to charge the lunatick's eſtate, with his keeping, maintenance, and cure.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS A. L. *late of ——— in the ſaid county, being a perſon lunatick, and ſo far diſordered in his ſenſes that he was and is dangerous to be permitted to go abroad, hath by warrant under the hands and ſeals of us ——— two of his majeſty's juſtices of the peace for the ſaid county, been apprehended and ſafely locked up in the houſe of* A. K. *at ——— in the ſaid county, the ſaid houſe being a ſecure place for that purpoſe; And whereas it appears to us, on the oaths of* C. W. *churchwarden, and* O. P. *overſeer of the poor of the pariſh of ——— that they the ſaid*

churchwarden

churchwarden and overseer have reasonably expended the sum of ——— in removing the said A. L. *to the said house of the said* A. K. *and in keeping, maintaining, and curing him there: These are therefore to authorize and command you, to seize and sell so much of the goods and chattels, and to receive so much of the annual rents of the lands and tenements of him the said* A. L. *within your said parish, as shall be necessary to pay the same: And for what shall be so seized, sold, or received by you, you are to account at the next quarter sessions of the peace to be holden for the said county. Given under our hands and seals, at ——— in the said county, the ——— day of ———.*

Q. Record to avoid the settlement of a bastard child born in vagrancy.

Westmorland. BE *it remembred, that on the ——— day of ——— in the ——— year of the reign of our sovereign lord* George *the second, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth,* A. B. *and* C. D. *overseers of the poor of the parish of ——— in the said county, at ——— in the said county, do bring unto me ——— one of the justices of our said lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, the body of one* A. P. *and do complain unto me the justice aforesaid, and give me to be informed, That on the ——— day of ——— in the year aforesaid, at ——— in the parish aforesaid, in the county aforesaid, she the said* A. P. *was wandring and begging, and that she the said* A. P. *then and there, to wit, on the said ——— day of ——— at ——— aforesaid, in the parish aforesaid, and county aforesaid, so wandring and begging, was delivered of a (male) child; and that thereby she the said* A. P. *hath become chargeable, and is now chargeable, to the said parish of ——— and that she the said* A. P. *had not then, nor yet hath any lawful settlement in the said parish of ——— And thereupon they the said overseers of the poor of the parish aforesaid, do pray of me the justice aforesaid, that for themselves and for the other inhabitants of the parish aforesaid a due remedy may be provided, and that justice may be done in that behalf, according to the form of the statute in that case made. Which complaint, information, and prayer, by me the justice aforesaid being heard, I the said* J. P. *at ——— aforesaid, in the county aforesaid, on the said ——— day of ——— in the year aforesaid, upon the examination of the said* A. P. *upon oath by me unto her upon the holy gospels of god administred, and upon other lawful evidence and testimony before me had and made, do find the said complaint and information to be true. And thereupon it is considered by me the justice aforesaid, that she the said* A. P. *be committed, and is by me committed, to the house of correction at ——— in the county aforesaid, until the next quarter sessions of the peace to be holden within and for the said county. In testimony whereof, I the said* J. P. *the justice afore-*

ſaid, at ——— aforeſaid, in the county aforeſaid, the ——— day of ——— aforeſaid, in the year aforeſaid, unto this record do ſet my ſeal.

Vellum. See Stamps.
Venire. See Proceſs.
Verdict. See Jurors.
Verjuice. See Exciſe.
Victuallers. See Alehouſes.
Vinegar. See Exciſe.
Unlawful aſſembly. See Riot.

Wages. See Servants.

Warrant.

FOR a warrant to ſearch for ſtolen goods, ſee Search Warrant.

If a juſtice ſee a felony or other breach of the peace committed in his preſence, he may in his own perſon apprehend the felon; and ſo he may by word command any perſon to apprehend him, and ſuch command is a good warrant without writing: But if the ſame be done in his abſence, then he muſt iſſue his warrant in writing. 2 *H. H.* 86.

Concerning which we will ſhew,

I. For what cauſes it may be granted.
II. What is to be done previous to the granting of it.
III. How far it is grantable on ſuſpicion.
IV. The form of it.

I. For what cauſes it may be granted.

There ſeems to be no doubt, but that a warrant may be lawfully granted by any juſtice, for treaſon, felony, or *præmunire*, or any other offence againſt the peace: Alſo it ſeems clear, that wherever a ſtatute gives to any one juſtice a juriſdiction over any offence, or a power to require any perſon to do a certain thing ordained by ſuch ſtatute, it impliedly gives a power to every ſuch juſtice

juſtice to make out a warrant to bring before him any perſon accuſed of ſuch offence, or compellable to do the thing ordained by ſuch ſtatute; for it cannot but be intended, that a ſtatute giving a perſon juriſdiction over an offence, doth mean alſo to give him the power incident to all courts, of compelling the party to come before him. 2 *Haw.* 84.

But in caſes where the king is no party, or where no corporal puniſhment is appointed, as in caſes for ſervants wages, and the like, it ſeemeth that a *ſummons* is the more proper proceſs; and for default of appearance the juſtice may proceed: and ſo indeed oftentimes it is directed by ſpecial ſtatutes.

II. What is to be done previous to the granting of it.

It is convenient, tho' not always neceſſary, that the party who demands the warrant be firſt examined on oath, touching the whole matter whereupon the warrant is demanded, and that examination put into writing. 1 *H. H.* 582. 2 *H. H.* 111.

Or at leaſt it is ſafe to bind him over to give evidence; leſt afterwards when the offender ſhall be apprehended, or ſhall ſurrender himſelf, the party that procured the warrant be gone. *Dalt. c.* 169.

III. How far it is grantable on ſuſpicion.

Lord *Hale* proves at large, contrary to the opinion of Lord *Coke* (4 *Inſt.* 177.) that a juſtice hath power to iſſue a warrant to apprehend a perſon ſuſpected of felony, before he is indicted; and that, tho' the original ſuſpicion be not in himſelf, but in the party that prays his warrant. 2 *H. H.* 107—110.

For the juſtices are judges of the reaſonableneſs of the ſuſpicion, and when they have examined the party accuſing, touching the reaſons of his ſuſpicion, if they find the cauſes of ſuſpicion to be reaſonable, it is now become the juſtices ſuſpicion as well as theirs. 2 *H. H.* 80.

And in another place ſpeaking of this opinion of Lord *Coke*, he delivers himſelf ſeemingly with a kind of warmth not uſual to him: I think, ſays he, the law is not ſo, and the conſtant practice in all caſes hath obtained againſt it, and it would be pernicious to the kingdom if it ſhould be as Lord *Coke* delivers it; for malefactors would eſcape unexamined and undiſcovered, for a man may have a probable and ſtrong preſumption of the guilt of a perſon, whom yet he cannot poſitively ſwear to be guilty. 1 *H. H.* 579.

Mr. *Hawkins* likewiſe ſeems to be of the ſame opinion againſt Lord *Coke*, but delivereth himſelf with his wonted caution and candour: It ſeems probable, he ſays, that the practice of juſtices of the peace in relation to this matter, is now become a law, and that a juſtice may juſtify the granting of a warrant for the arreſt of any perſon, upon ſtrong grounds of ſuſpicion, for a felony or other miſdemeanor, before any indictment hath been found againſt him; yet inaſmuch as juſtices claim this power rather by connivance, than any expreſs warrant of law, and ſince the undue execution of

it may prove ſo highly prejudicial to the reputation as well as the liberty of the party, a juſtice cannot well be too tender in his proceedings of this kind, and ſeems to be puniſhable not only at the ſuit of the king, but alſo of the party grieved, if he grant any ſuch warrant groundleſly and maliciouſly, without ſuch a probable cauſe as might induce a candid and impartial man to ſuſpect the party to be guilty. 2 *Haw.* 85.

But a general warrant, upon a complaint of a robbery, to apprehend *all perſons ſuſpected*, and to bring them before a juſtice, hath been ruled void; and falſe impriſonment lies againſt him that iſſues ſuch a warrant. 1 *H. H.* 580. 2 *H. H.* 112.

IV. The form of it.

1. Mr. *Dalton* ſays, the warrant is the better, if it bear date of the place where it was made. *Dalt. c.* 169.

And Lord *Hale* ſays, the place, tho' it muſt be alledged in pleading, need not be expreſſed in the warrant. 2 *H. H.* 111.

And Mr. *Hawkins* ſays, It is ſafe, but perhaps not neceſſary, in the body of the warrant to ſhew the place where it was made; yet it ſeems neceſſary to ſet forth the county in the margin at leaſt, if it be not ſet forth in the body. 2 *Haw.* 85.

2. It may be directed to the ſheriff, bailiff, conſtable, or to any indifferent perſon by name who is no officer; for the juſtice may authorize any one to be his officer, whom he pleaſes to make ſuch; yet it is moſt adviſable to direct it to the conſtable of the precinct wherein it is to be executed, for that no other conſtable, and *a fortiori* no private perſon, is compellable to ſerve it. 2 *Haw.* 85. *Dalt. c.* 169. 2 *H. H.* 110.

But in the caſe of an act of parliament, it is ſaid, that if the act directeth that a juſtice ſhall grant a warrant, and doth not ſay to whom it ſhall be directed, by conſequence of law it muſt be directed to the conſtable, and it cannot be directed to the ſheriff, unleſs ſuch power is given in the act. L. *Raym.* 1192. 2 *Salk.* 381.

3. The warrant may be ſtiled in divers manners: As, 1. In the name of the king; and yet the teſte muſt be under the name of the juſtice that grants it out. Or, 2. It may be ſtiled and made only in the name of the juſtice. Or, 3. It may be made without any ſuch ſtile, and only under the teſte of the juſtice, or only ſubſcribed by him. As followeth:

In the king's majeſty's name.

Weſtmorland. GEORGE *the ſecond, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth; To our ſheriff of the county of* ——— *to the high conſtables of the hundred of* ——— *in the ſame county, and to the petty conſtables of the town of* ——— *in the ſame county, and to all and ſingular our bailiffs and miniſters in the ſame county, as well within liberties, as without, greeting:*

Foraſmuch

Forasmuch as A. I. *of* ——— *hath come before* J. P. *esquire, one of our justices assigned to keep our peace within the said county, and hath* &c.

(Concluding it in the justice's name, as thus;) *Witness the said* J. P. *at* ——— *the* ——— *day of* ———.

Note, That wheresoever the warrant is made in the king's name, there it ought to be directed to all ministers as well within liberties as without, for that the king is made a party: And so it may be done in all other warrants, especially for felony, or for the peace or the good behaviour, because it is the service of the king. *Dalt. c.* 174.

Or thus, in the name of the justice himself;

Westmorland. J. P. *esquire, one of the justices of our lord the king, assigned to keep the peace within the said county; To the sheriff of the said county, to the bailiff or constables of the hundred of* ——— *within the said county, to the petty constables of the town of* ——— *within the said hundred and county, and to all other the ministers and officers of our said lord the king within the said county, and to every of them, greeting:*

Forasmuch as &c. *Given under my hand and seal the* ——— *day of* &c. Dalt. c. 174.

4. Regularly, the warrant, especially if it be for the peace or good behaviour, or the like, where sureties are to be found or required, ought to contain the special cause and matter, whereupon it is granted, to the intent that the party upon whom it is to be served, may provide his sureties ready, and take them with him to the justice to be bound for him; but if the warrant be for treason, murder, or felony, or other capital offence, or for great conspiracies, rebellious assemblies, or the like, it needs not contain any special cause, but there the warrant of the justice may be to bring the party before him, to make answer to such things or matters generally, as shall be objected against him on the king's behalf. *Dalt. c.* 169. 2 *Haw.* 85. 2 *H. H.* 111.

But Mr. *Lambard* says, every warrant made by a justice of the peace ought to comprehend the special matter upon which it proceedeth; even as all the king's writs do bear their proper cause in their mouth with them: And as for the form that is commonly used, *to answer to such things as shall be objected*, and such like, they were not fetched out of the old learned precedents, but lately brought in by such as either knew not, or cared not, what they writ. *Lamb.* 87.

5. The warrant ought regularly to mention the name of the party to be attached, and must not be left in generals, or with blanks to be filled up by the party afterwards. 2 *H. H.* 114. *Dalt. c.* 169.

6. The warrant may issue to bring the party before the justice who granted the warrant specially, and then the officer is bound to bring him before the same justice; but if the warrant be

to bring him before any juſtice, then it is in the election of the officer to bring him before what juſtice of the county he thinks fit, and not in the election of the priſoner. 1 *H. H.* 582. 2 *H. H.* 112.

7. It ought to ſet forth the year and day wherein it is made, that in an action brought upon an arreſt by virtue of it, it may appear to have been prior to ſuch arreſt; and alſo, in caſe where a ſtatute directeth the proſecution to be within ſuch a time, that it may appear, that the proſecution is commenced within ſuch time limited: Likewiſe, where a penalty is given to the poor of the pariſh where the offence ſhall be committed, or the like, it ought to ſpecify the place where the offence was committed. 2 *Haw.* 85.

8. Finally, it ought to be under the hand and ſeal of the juſtice who makes it out. 2 *Haw.* 85.

The execution of a warrant belongs to title Arreſt.

Watch.

Watch and ward.

WATCHING is properly intended of the night, and warding for the day time. *Dalt. c.* 104.

Watches are of three kinds:

By the ſtatute of Wincheſter.

1. That which is appointed by the ſtatute of *Wincheſter*, *c.* 4. and is inforced by the 5 *H.* 4. *c.* 3. which is, *That from* Aſcenſion day *to* Michaelmas, *in every city* 6 *men ſhall keep watch at every gate, in every borough* 12 *men, every town* 6 *or* 4 *according to the number of the inhabitants, and ſhall watch the town continually all night, from the ſun ſetting to the ſun riſing.* 13 Ed. 1. ſt. 2. c. 4.

This watch is to be ſet by the conſtable, and their power is this: *If any ſtranger do paſs by them, he ſhall be arreſted until morning, and if no ſuſpicion be found he ſhall go quit; and if they find cauſe of ſuſpicion, they ſhall forthwith deliver him to the ſheriff, until he be acquitted in due manner. And if they will not obey the arreſt, they ſhall levy hue and cry upon them.* id.

Inhabitants] It hath been reſolved, that a ſtranger, who is not an inhabitant, cannot hereby be compelled to keep watch. 2 *Haw.* 80.

Deliver him to the ſheriff] That is, to the common gaol. 2 *H. H.* 96.

By the conſtable.

2. But this watch only extends between *Aſcenſion day* and *Michaelmas*; but there is another watch that may be kept by the conſtable *ex officio*, which may extend to other times; as by the 5 *Ed.* 3. *c.* 14. for night walkers, and perſons ſuſpicious by night or day. 2 *H. H.* 97.

And altho' a conſtable is not bound to any preciſe time for this kind of watch, nor puniſhable if he omit it, barely for the omiſ-

ſion, if he be ready upon occaſion to do his office when required in theſe caſes; yet it is in his power to hold ſuch watches, as often as he pleaſes, and it is convenient and juſtifiable: and herein the watchmen are the miniſters and aſſiſtants of the conſtable, and are under the ſame protection with him, and may act as he doth. 2 *H. H.* 97.

Yea it is holden, that every private perſon may by the common law arreſt any ſuſpicious night walker, and detain him till he give a good account of himſelf. 2 *Haw.* 80.

3. There is alſo another kind of watch, which is by authority of the juſtices of the peace, which alſo may be held at other times than the above ſtatute of the 13 *Ed.* 1. appoints; and the watch thus appointed hath the ſame power as either of the former: And this ſeems to be within the power of any one juſtice, by the firſt aſſignment in the commiſſion; but the ſafer way, and more uſual is, by order of ſeſſions. *Lamb.* 186. 2 *H. H.* 97. *Dalt. c.* 104. By the juſtices.

4. It ſeems to be agreed, that every inhabitant is bound to keep watch in his turn, or to find another. 2 *Haw.* 80. Who ſhall watch.

But they are not compellable to watch at the will of the conſtable, but only when their turn cometh; which was the ancient cuſtom at common law. *Dalt. c.* 104.

And the watching and warding ought to be by men able of body, and ſufficiently weaponed. *Dalt. c.* 104.

And therefore a woman required to watch, may procure one to watch for her. *Comb.* 243.

5. If a watchman take any one for ſuſpicion of felony, he may inquire of his good name and fame, and if he finds him to be of good name and fame, he may let him go, without being guilty of an eſcape. *Dalt. c.* 159. Perſons taken by watchmen.

And if a perſon will not obey the arreſt of the watchmen, they may levy hue and cry upon him, that he may be taken; or elſe they may juſtify to beat him, for that he reſiſteth the peace and juſtice of the realm; and may alſo ſet him in the ſtocks for the ſame until the morning. *Dalt. c.* 104.

And the watchmen may deliver ſuch perſons to the conſtable, or may convey them to a juſtice, to be examined, and to be bound over or committed, until they be acquitted in due manner. *Dalt. c.* 104.

6. A watchman hath a double protection of the law: 1. As an aſſiſtant to the conſtable, when the conſtable is preſent or in the watch; for ſo every man who is aſſiſting to the conſtable in the execution of his office, hath the ſame protection that the law gives the conſtable. 2. Purely as a watchman ſet by order of law; and the law takes notice of his authority *ſub eo nomine*, and therefore killing of a watchman in execution of his office, is murder. 2 *H. H.* 98. 3 *Inſt.* 52. 9 *Co.* 66. Indemnity of watchmen.

And if a watchman be killed in endeavouring to apprehend a burglar, his executors ſhall be intitled to 40 *l.* reward. 5 *An. c.* 31. *ſ.* 2.

7. If any perſon refuſe to watch in his turn, at the commandment of the conſtable, he may preſent the default at the aſſizes or Puniſhment for not watching.

ſeſſions, or may complain thereof to any juſtice of the peace, who may bind the offender to the good behaviour, and ſo over to the next ſeſſions. *Dalt. c.* 104. And there he may be indicted. 2 *Haw.* 80.

But here it is to be noted, that in *Cro. El.* 204. which Mr. *Dalton* cites for his authority in this matter, it is not ſaid, that the juſtice may bind him to the good behaviour, but only that, ——that he may inflict puniſhment upon the refuſer.

Warrant for the keeping of watch.

Weſtmorland. { To the conſtable of the hundred of —— in the ſaid county.

AT *a general quarter ſeſſions of the peace holden at* —— *in and for the ſaid county, before us* —— *eſquires, juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, You are hereby required forthwith to iſſue your warrants to the ſeveral petty conſtables within your ſaid hundred, that they do cauſe watch to be kept by night, and ward by day, with able men, within and throughout their reſpective conſtablewicks, from the* —— *day of* —— *now next enſuing, unto the* —— *day of* —— *then next following; and that they do apprehend or cauſe to be apprehended all rogues, vagabonds, and other wandring, idle, and diſorderly perſons, and carry them before ſome of his majeſty's juſtices of the peace in and for the ſaid county, to be examined and further dealt withal according to law. Given under our hands and ſeals, the day and year firſt abovewritten.*

Commitment of a perſon apprehended by the watch.

Weſtmorland. { To the conſtable of —— and to the keeper of the houſe of correction at ——

WHEREAS A. O. *was this day brought before me* J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, the ſaid* A. O. *having been taken laſt night by the watch ſet by the conſtable of* —— *and charged with wandring abroad at unſeaſonable times of the night, and alſo with other diſorderly behaviour, and not now giving a good account of himſelf before me: Theſe are to require you the ſaid conſtable of* —— *to convey the ſaid* A. O. *to the ſaid houſe of correction at* —— *aforeſaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby require you the ſaid keeper of the houſe of correction aforeſaid, to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep until the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, allowing unto him in the mean time ſuch maintenance as he ſhall deſerve by his labour; and have you him then there, together with this precept. Given under my*

hand

hand and seal, at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ———

Indictment for not watching.

THE *jurors for our lord the king upon their oath present, that* A. O. *of ——— in the said county, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— and long before, and always after unto the day of the taking of this inquisition, was, and yet is, an inhabitant of the town of ——— aforesaid, in the county aforesaid, and that the said* A. O. *then and there, to wit, on the said ——— day of ——— in the year aforesaid, at ——— aforesaid, in the county aforesaid, was duly summoned in his turn to watch with the constable of ——— aforesaid, in the night of the same day; nevertheless the said* A. O. *his duty in that behalf not regarding, did not watch in the said night of the same day, in the year aforesaid, nor in any part of the said night, with the said constable at ——— aforesaid in the county aforesaid, but did then and there utterly refuse so to do, and wilfully and obstinately therein did make default; in contempt of our said lord the king, and of his laws, and against the peace of our said lord the king, his crown and dignity.*

Watchmaking. See Servants.
Watermen. See Thames.

Weights and measures.

THE particular weights and measures of different sorts of goods, may be seen under their respective titles: and what is treated of here, is touching weights and measures in general.

I. Of the different kinds of weights and measures.

II. Standard of weights and measures to be kept in market towns.

III. Mayors and other officers to seal and regulate measures.

IV. Punishment of mayors and other officers for omitting their duty.

I. Of

I. Of the different kinds of weights and measures.

Divers weights.

1. Notwithſtanding the many ſtatutes which have enacted, that there ſhall be but one weight and one meaſure, throughout the realm, there always have been, and ſtill are two kinds of weights uſed in *England*, and both warrantable; the one by law, and the other by cuſtom; but they are for ſeveral ſorts of wares or commodities: for there is *troy* weight, and *averdupois*. *Dalt. c.* 112.

Troy weight.

2. *Troy* weight is by law; and thereby are weighed ſilk, gold, ſilver, pearl, and precious ſtones. And this hath to the pound 12 ounces. *Dalt. c.* 112.

Averdupois weight.

3. *Averdupois* (which in *French* is as much as to ſay to have full weight) is by cuſtom, yet confirmed by ſtatute; and thereby are weighed all kind of grocery wares, drugs, butter, cheeſe, fleſh, wax, pitch, tar, tallow, wool, hemp, flax, iron, ſteel, lead, and all other commodities which bear the name of garble, and whereof iſſueth a refuſe or waſte; (and alſo bread, by the 8 *An. c.* 18.) And this hath to the pound 16 ounces; and 12 pounds over are allowed to every hundred. *Dalt. c.* 112.

Divers meaſures.

4. And no leſs do the meaſures alſo differ in different places. Thus Mr. *Dalton* obſerves, that the buſhel of corn in one place is greater than in another; and it ſeems, he ſays, that the cuſtom of the place is to be obſerved: Yet he makes a *quæry* upon it, becauſe it is contrary to the great charter, and divers other ſtatutes; and cuſtom or preſcription againſt a ſtatute ſeemeth not good. *Dalt. c.* 112.

II. Standard of weights and meaſures to be kept in market towns.

Standard to be kept in market towns, at which all may weigh.

In every city, borough, and market town, a common balance ſhall be, with common weights ſealed, and according to the ſtandard of the exchequer, upon the common coſts of ſuch city, borough, or market town, in the keeping of the mayor, or conſtable; on pain of 10 *l.* for ſuch city making default, borough 5 *l.* and market town 40 *s.*

At which balance all the inhabitants may freely weigh without any thing paying; taking nevertheleſs of foreigners, for every draught within the weight of 40 *lb.* a farthing, and for every draught betwixt 40 *lb.* and 100 *lb.* an half penny, and for every draught betwixt 100 *lb.* and 1000 *lb.* a penny.

And juſtices of the peace, mayors, bailiffs, and ſtewards of franchiſes may enquire of offenders againſt this ordinance, and do execution of them that be found faulty. 8 *H.* 6. *c.* 5. 11 *H.* 7. *c.* 4.

III. Mayors and other officers to seal and regulate measures.

1. The clerk of the market, and where there is none, the mayor, or head officer, or other person having benefit of the market, shall cause to be sealed all measures duly gauged, by the standard which he shall have out of the exchequer. 22 & 23 *C.* 2. *c.* 12. *s.* 4. Measures to be sealed.

2. For which he shall be paid, 1 *d.* for the sealing and marking of a bushel, an halfpenny for a peck or half peck, and a farthing for a gallon, pottle, quart, pint, or half pint. 22 *C.* 2. *c.* 8. *s.* 4. Fee for the same.

3. And whosoever shall sell by any other weight, measure, or yard, not according to the standard, or keep any such whereby any thing is bought or sold, shall forfeit 5 *s.* on conviction before one justice, or mayor, on oath of one witness; to be levied by the churchwardens and overseers, or some of them, to the use of the poor, by distress. In default of distress, imprisonment till paid. 16 *C.* *c.* 19. *s.* 2. Penalty of using any other.

But water measure (*viz.* 5 pecks to the bushel, *Dalt.* *c.* 112.) in sea port towns shall continue as usual. *id.* *s.* 7. Except in the measuring of corn and salt. 22 *C.* 2. *c.* 8. *s.* 2.

4. And the mayors, and other head officers in market towns, shall twice a year or oftner cause all weights and measures within the same, to be brought before them, and examined; and such as they find defective, to be broken and burnt; and the offender shall forfeit to the mayor or other officer, for the first time, 6 *s.* 8 *d.* for the second time 13 *s.* 4 *d.* and the third time 20 *s.* and be set on the pillory: Weights to be examined.

And two justices (1 *Q.*) may hear and determine these offences, as well by examination as by inquiry, and set fines and amerciaments, and make process thereupon, as if they were indicted before them for breaking of the king's peace. 11 *H.* 7. *c.* 4.

5. Also, the constable shall search, if any persons use any other measure than according to the standard; or shall strike in any other manner, than even by the wood or brim; or shall sell or buy by a measure unsealed; and if he find any unsealed measure, he shall break the same, and shall present the offenders at the next private or quarterly sessions. 22 *C.* 2. *c.* 8. *s.* 6. Constables to search.

IV. Punishment of mayors and other officers for omitting their duty.

1. If any mayor, lord of the liberty, or other person authorized to mark or seal measures, shall neglect or refuse, being required, to seal or mark any bushel, half bushel, or peck duly gaged; he shall forfeit for the first offence 5 *l.* and for every other offence 10 *l.* on conviction by presentment or indictment at the county sessions; half to the prosecutor, and half to the poor; to be levied by distress; and for default of distress, to be imprisoned Penalty of refusing to seal.

by

by warrant of the ſaid juſtices till payment be made. 22 *C.* 2. *c.* 8. *ſ.* 3, 4.

Penalty on taking more than is due for ſealing.

2. Or if he ſhall take more than one penny for the ſealing and marking of a buſhel, or more than a halfpenny for a half buſhel or peck, or more than a farthing for a gallon, pottle, quart, pint, or half pint; he ſhall forfeit 5 *s.* to the poor, on conviction before one juſtice, by the oath of one witneſs; to be levied by the churchwardens or overſeers, by diſtreſs; in default of diſtreſs, impriſonment till paid. 22 *C.* 2. *c.* 8. *ſ.* 4.

Penalty of ſuffering other meaſures.

3. And if any mayor or other head officer, ſhall ſuffer any other meaſure to be uſed than according to the ſtandard, and ſealed; he ſhall forfeit 5 *l.* half to the proſecutor, and half to the poor, on conviction by preſentment or indictment at the county ſeſſions, by diſtreſs: for default of diſtreſs, to be impriſoned by warrant of the juſtices till paid. 22 *C.* 2. *c.* 8. *ſ.* 3.

General penalty for neglect of duty.

4. And generally, by the 16 *C.* *c.* 19. *ſ.* 5. If any mayor, or other officer, or any lords of liberties or their agents, ſhall receive any fines or fees, other than are allowed by ſtatute or cuſtom; or ſhall take any fee for the marking, ſigning, or examination of any weights or meaſures, which have been formerly marked or ſealed; or ſhall impoſe any fine without a due and legal trial of the offence; or ſhall otherwiſe miſdemean himſelf in the execution of his office; he ſhall forfeit to the poor for the firſt offence 5 *l.* for the ſecond 10 *l.* and for the third and every other offence 20 *l.* on conviction before one juſtice, on the oath of one witneſs; to be levied by the churchwardens or overſeers by diſtreſs: for want of diſtreſs, impriſonment till paid. 16 *C.* *c.* 19. *ſ.* 5.

Acts to be given in charge.

5. And all juſtices of the peace, conſtables, and other officers ſhall ſee the acts abovementioned of the 22 *C.* 2. *c.* 8. and 22 & 23 *C.* 2. *c.* 12. put in due execution; and the juſtices of aſſize, and of the ſeſſions, ſhall preſs the ſame in their charges to the grand juries. 8 *An.* *c.* 18. *ſ* 12.

But after all, notwithſtanding the puniſhments aforeſaid, appointed by ſtatute, for ſelling by falſe weights and meaſures; yet the ſame is alſo an offence at the common law, and conſequently may be puniſhed by indictment, fine, and impriſonment.

Wife.

Woman marrying pending an action.

1. T. 2 *G.* 2. *King* and his wife againſt *Jones*. The plaintiff *Jones* declared againſt *Judith Parnell*, upon ſeveral promiſes. She by the name of *Judith King* appears by attorney, and pleads *non aſſumpſit*. And after a verdict for the plaintiff, ſhe and *Edward King* bring a writ of error, and aſſign for error, that ſhe has appeared and pleaded as a feme ſole, whereas at the time of her appearance and plea ſhe was married to the ſaid *Edward King*. But by the court, This is to abate the plaintiff's writ by the act of the defendant, which was never allowed; we

must

must take it, that at the time of bringing the action the defendant was a feme sole, because they pretend to carry it back no farther than the appearance. And plaintiffs would be in a fine condition, if after they have arrested a woman, she shall be allowed to overthrow their proceedings by a subsequent marriage. And the judgment was affirmed. *Str.* 811.

Committing offences with her husband.

2. A wife, or feme covert, is so much favoured in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft, in company with, or by coercion of her husband. 1 *Haw.* 2.

But if she commit a theft of her own voluntary act, or by the bare command of her husband; or be guilty of treason, murder, or robbery, in company with, or by coercion of her husband, she is punishable as much as if she were sole, because of the odiousness and dangerous consequence of these crimes. 1 *Haw.* 2. 1 *H. H.* 47. *Dalt. c.* 157.

And the coercion of the husband is only a presumption till the contrary appear; for if upon the evidence it can clearly appear, that the wife was not drawn to it by the husband, but that she was the principal actor and inciter of it, she seems to be guilty as well as the husband. 1 *H. H.* 516.

Accessary in receiving her husband.

3. A wife shall not be deemed accessary to a felony for receiving her husband who has been guilty of it; as her husband shall be for receiving her: because she is under the power of her husband, and she is bound to receive him. 1 *Haw.* 2. 1 *H. H.* 47.

Keeping a bawdy house.

4. But a wife may be indicted together with her husband, and condemned to the pillory with him for keeping a bawdy house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. 1 *Haw.* 2.

Wife to suffer corporally; but the husband to pay the forfeiture.

5. And generally, a married woman shall answer as much as if she were sole, for any offence not capital, against the common law or statute; and if it be of such a nature that it may be committed by her alone, without the concurrence of the husband, she may be punished for it without the husband, by way of indictment; which being a proceeding grounded merely on the breach of the law, the husband shall not be included in it for an offence to which he is no way privy. But if a wife incur the forfeiture of a penal statute, the husband may be made a party to an action or information for the same (as he may generally to any suit for a cause of action given by his wife), and shall be liable to answer what shall be recovered thereupon. 1 *Haw.* 3.

Eloping.

6. If a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred for ever of action to demand her dower. 13 *Ed.* 1. *st.* 1. *c.* 34.

M. 12 *G. Morris* and *Martin.* Action for meat and other things provided for the defendant's wife. The defendant proved she went away from him with an adulterer. *Raymond* Ch. J. held, that the husband should not be charged for necessaries for her, tho'

tho' the plaintiff who provided for her had no notice; and he ſaid, Ch. J. *Holt* always ruled it ſo. *Str.* 647.

T. 12 *G.* *Mainwaring* and *Sands.* In an action againſt the huſband for a laced head ſold to the wife, it was proved, that the wife lived from her huſband in adultery, and that ſhe told the plaintiff ſhe had a huſband, but that ſignified nothing, for ſhe would pay him her ſelf. *Raymond* Ch. J. held the defendant not chargeable, and ſaid he ſhould have ruled it ſo, if there had been no actual notice, which only ſtrengthened the caſe. *Str.* 706.

T. 4 *G.* 2. *Child* and *Hardyman.* Action for linen ſold to the defendant's wife. Upon *non aſſumpſit*, the delivery was proved. And the defendant proved that ſhe had lived in a very lewd manner; one Mr. *Nott* frequently coming to her at her huſband's houſe, and they were locked up together in a bed-chamber; and other indecencies paſſed between them. And it was alſo proved, that ſhe ſeveral times went to the houſe of this *Nott*, a gentleman in *Wiltſhire*, who lived within 3 miles of the defendant's houſe. It did not appear farther, than that he diſliked her going and ſtaying at Mr. *Nott*'s. But under theſe circumſtances, the huſband and wife continued to live together. Afterwards, ſhe went away from him, and went to *Marlborough*, where ſhe reſided for ſome time; but after the leaving her huſband's houſe, it did not appear that ſhe ever ſaw Mr. *Nott*, or lived in a lewd manner. After ſome time, ſhe ſent *Lucas* an attorney to her huſband, to deſire that he would receive her again; the huſband told him, that if ſhe came again, ſhe ſhould never ſit at the upper end of his table, nor have the government of the children, but ſhould live in a garret. Then *Lucas* propoſed to him, to make her an allowance, and propoſed about 80 or 100 *l.* a year, he being worth about 5 or 600 *l.* a year. But that was not complied with; and afterwards ſhe came to *London*, and bought the linen to the amount of 53 *l.* By *Raymond* Ch. J. If a woman elopes from her huſband, tho' ſhe does not go away with an adulterer, or in an adulterous manner; the tradeſman truſts her at his peril, and the huſband is not bound. And this hath been ſo ajudged in 2 or 3 caſes. Indeed if he refuſe to receive her again, from that time it may be an anſwer to the elopement In this caſe he doth not abſolutely refuſe to receive her again; but that ſhe ſhould neither ſit at his table, nor have any government of the children, but ſhould be kept in a garret; and ſhe deſerved no better uſage. And the plaintiff was nonſuit. *Str.* 875.

M. 18 *G.* 2. *Bolton* and *Prentice.* In *aſſumpſit* for goods ſold and delivered to the defendant's wife, the caſe appeared to be, that the defendant and his wife had formerly lodged at the plaintiff's houſe, and the plaintiff furniſhed her with goods; and the defendant finding the plaintiff had helped her to pawn her watch, and ſuſpecting he confederated with her, left the lodgings, after paying the plaintiff his bill, and forbidding him ever truſting her again. After this the defendant and his wife cohabited together for a year; when, without any cauſe appearing, he left her, locked up her cloaths, and upon her finding him out, refuſed to admit

admit her, and ſtruck her, and declared he would not maintain her, or pay any body that did. In this diſtreſs, ſhe borrowed cloaths of her friends, and applied to the plaintiff, who furniſhed her with neceſſaries according to the defendant's degree; which the defendant refuſing to pay for, this action was brought; and upon trial the jury found for the plaintiff. Upon motion for a new trial, the court held the verdict was right; for whilſt they were at the plaintiff's, there was a particular reaſon for the particular prohibition; yet the cauſeleſs turning her away deſtitute afterwards, gave her the general credit again: and if a huſband ſhould be allowed, under the notion of a particular prohibition, to deſtroy her obtaining credit in one place, he may in the ſame manner prevent it with all people ſhe is acquainted with. He appears to be a wrong doer, and therefore has no right to prohibit any body. They diſtinguiſhed this caſe from the caſe of *Manby* and *Scott*, 1 *Sid.* 109. for there the wife was guilty of the firſt wrong in eloping. *Str.* 1214.

Carrying her away with the huſband's goods.

7. Of women carried away (*viz.* violently, or againſt their wills, 2 *Inſt.* 435.) with the goods of their huſbands, the king ſhall have the ſuit for the goods ſo taken away. 13 *Ed.* 1. *ſt.* 1. *c.* 34. That is, it ſhall be felony. And ſo, if any man takes another man's wife, with her huſband's goods, againſt the huſband's will, this is alſo felony. *Dalt. c.* 157.

Wife taking the huſband's goods.

8. But a wife herſelf cannot feloniouſly take her huſband's goods; and tho' ſhe ſo takes her huſband's goods, and deliver them to a ſtranger, yet it is no felony in the ſtranger. *H. Pl.* 65. 1 *Haw.* 93.

Guilty of forcible entry.

9. A married woman, by her own act (but not in reſpect of what is done by others at her command, becauſe all ſuch commands of hers are void) may commit a forcible entry or detainer; and upon the juſtice's view of the force, ſhe ſhall be impriſoned therefore, and ſhe may be fined in ſuch caſe: but ſuch fine ſet upon the wife, ſhall not be levied upon the huſband; for the huſband ſhall never be charged for the act or default of his wife, but when he is made a party to the action, and judgment given againſt him and his wife. *Dalt. c.* 126. 9 *Co.* 72. 11 *Co.* 61.

Guilty of ſlander, treſpaſs, or default.

10. Likewiſe if ſhe ſhall commit any riot, or do any treſpaſs or other wrong, ſhe is puniſhable for it; and for a treſpaſs done by the wife, or for a ſcandal publiſhed by her, the action lieth againſt both the huſband and wife, and there the huſband is chargeable to the damages or fine, becauſe he is party to the action and judgment: but if a wife without her huſhand be indicted of a treſpaſs, riot, or any other wrong, there the wife ſhall anſwer, and be party to the judgment only; and in ſuch caſe, the fine ſet upon the wife ſhall not be levied upon the huſband; yet after the huſband's death, ſuch damages or fines ſhall then be levied of the wife her ſelf; and as for impriſonment, or other corporal pain, it ſhall be inflicted upon the wife only, and not upon the huſband for his wife's act or default. *Dalt. c.* 139.

M. 19 *G.* 2. *Finch* and his wife againſt *Duddin* and his wife. In an action for a battery of the plaintiff's wife by the defendant's wife, there was judgment for the plaintiffs, and the wife of the defendant

defendant was only taken in execution. She moved to be discharged, but upon affidavits of endeavours to take the husband, and it not appearing there was any design to screen him, the court refused it, on the authority of *Pitt* and *Meller*. *Str.* 1237.

Which case of *Pitt* and *Meller*, *T.* 15 *G.* 2. was thus: In trover against both, and judgment and execution against both; the wife petitioned to be discharged out of custody; which the court refused, unless it could be shewn, that there was fraud and collusion between the plaintiff and the husband, to keep her there. *Str.* 1167.

M. 10 *G. Tarrant* and *Mawr*. The wife libelled in the spiritual court for calling her whore, and there being proceedings likewise for defamation against *her* by the other, the two husbands enter into an agreement to stay proceedings on both sides; and upon one of the wives going on, the husband moved for a prohibition; but it was denied: for by the court, the suit is by the wife, to recover her fame, and it is not in the power of the husband to restrain her. *Str.* 576.

Receiving stolen goods.

11. If a woman receive stolen goods into her house, knowing them so to be; or shall lock them up in her chest or chamber, her husband not knowing thereof; if her husband, so soon as he knoweth thereof, do forthwith forsake his house, and her company, and make his abode elsewhere, he shall not be charged for her offence; whereas otherwise, the law will impute the fault to him, and not to her. *Dalt. c.* 157.

Guilty of conspiracy with her husband.

12. A prosecution for conspiracy is not maintainable against a husband and wife only; because they are esteemed but as one person in law, and are presumed to have but one will. 1 *Haw.* 192.

Woman servant marrying.

13. If a woman who is a servant shall marry, yet she must serve out her time, and the husband cannot take her out of her master's service. *Dalt. c.* 58.

Wife hiring to be a servant.

14. Also if a married man and his wife do bind themselves to serve, they shall be compelled to serve, according to their covenant or agreement. *Dalt. c.* 58.

Killing her husband, petty treason.

15. If the wife maliciously kill her husband, it is petty treason; but if the husband maliciously kill his wife, it is but murder. *Dalt. c.* 142.

Evidence for or against her husband.

16. Husband and wife cannot be witnesses for one another; nor regularly against one another. 2 *Haw.* 431.

But a wife may demand surety of the peace against her husband threatning to beat her outrageously, and a husband also may have it against his wife. 1 *Haw.* 127.

And in other criminal cases, the wife may be a witness against her husband, where she is the party grieved; but not in civil cases. *Dalt. c.* 164.

Cannot be bound by recognizance.

17. A wife cannot be bound herself by recognizance, but her sureties only. *Dalt. c.* 117.

Windows.

I. First meeting of the commissioners, for the issuing precepts to return assessors.
II. Second meeting; charge to the assessors, with the manner of laying the assessment.
III. Third meeting; signing the assessment, with warrant to collect.
IV. Fourth meeting; the appeal.
V. Collecting
VI. Collector paying to the receiver.
VII. Receiver paying into the exchequer.
VIII. Duplicates to be transmitted into the exchequer.
IX. General penalty on officers not doing their duty.
X. Indemnity of officers in doing their duty.

I. First meeting of the commissioners, for the issuing precepts to return assessors.

1. COmmissioners of the land tax shall be commissioners for the duties on houses and windows. 20 *G.* 2. *c.* 3. *s.* 6. Commissioners of these duties.

But no commissioner of the land tax shall act as commissioner of these duties, unless duly qualified, (that is, unless he be taxed at 100 *l.* a year in the county or division, except certain counties in *Wales*, as by the land tax acts) on pain of 20 *l.* to be levied as other penalties by this act. 21 *G* 2. *c.* 10. *s.* 3.

But they shall not be obliged to take the oaths, and subscribe the declaration, and receive the sacrament, as directed by the 25 *C.* 2. *c.* 2. as other persons qualifying for offices; but only to take the oaths of allegiance, supremacy, and abjuration, as by the land tax acts. 20 *G.* 2. *c.* 3. *s.* 27.

2. Which said commissioners shall meet yearly, at the most usual place of meeting, at such time as shall be appointed for the first general meeting of the commissioners of the land tax, or on such other day as they shall think proper, before *April* 30. yearly. 20 *G.* 2. *c.* 3. *s.* 6. Time and place of meeting.

3. And at such first meeting, they may agree to subdivide themselves and the other commissioners not then present, in such manner as to them shall seem meet. *id. s.* 6. Subdividing.

4. Also, at such first meeting, they or the major part of them then present, shall direct their several or joint precepts (A) to such inhabitants, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to Precept to return assessors.

appear before the ſaid commiſſioners, at ſuch time and place as they ſhall appoint, not exceeding ten days. 20 *G.* 2. *c.* 3. *ſ.* 6.

Aſſeſſors in towns corporate.

5. But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof. 20 *G.* 2. *c.* 3. *ſ.* 18.

Collectors to return their laſt collection bills.

6. And the laſt collectors ſhall cauſe a copy of the aſſeſſments given to them, and of the collection made by them, to be fairly written and ſigned by them, but with ſuch alterations therein as ſhall be neceſſary, by reaſon of any new houſes erected, or the number of windows in any houſe increaſed; or by reaſon of the change of inhabitants or occupiers of any houſe, or otherwiſe, or a true duplicate thereof, ſigned as aforeſaid, to be delivered to three or more commiſſioners yearly, within ten days after their firſt meeting. 20 *G.* 2. *c.* 3. *ſ.* 8.

So that it may be moſt proper to direct the precept for the laſt collectors to be aſſeſſors.

Aſſeſſors to take the oaths.

7. And every aſſeſſor, before he acts, ſhall take the oaths required by the 1 *W.* *c.* 18. before three commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 6.

Which oaths are the oaths of allegiance and ſupremacy.

But quakers, inſtead of ſuch oaths, ſhall be allowed to make and ſubſcribe the declaration of fidelity, preſcribed by the ſaid act of the 1 *W.* *c.* 18. 20 *G.* 2. *c.* 42. *ſ.* 4.

Aſſeſſors refuſing.

8. Aſſeſſors refuſing to take the oaths, or their offices, ſhall forfeit 5 *l.* 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3.

II. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.

Charge to the aſſeſſors.

1. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates and duties, and openly declare the effect of their charge unto them, and how they ought to make their aſſeſſments. 20 *G.* 2. *c.* 3. *ſ.* 6.

Duty on houſes.

2. That is to ſay, For every dwelling houſe inhabited, ſhall be paid yearly 2 *s.* 20 *G.* 2. *c.* 3. *ſ.* 2.

Duty on windows.

3. And for every window or light in every dwelling houſe, containing 10, 11, 12, 13, or 14 windows or lights, ſhall be paid moreover the yearly ſum of 6 *d.* and for every window or light in every dwelling houſe as aforeſaid, containing 15, 16, 17, 18, or 19 windows, the yearly ſum of 9 *d.* each; and for every window or light in every dwelling houſe as aforeſaid, containing 20 windows or lights, and upwards, the yearly ſum of 1 *s.* each. 20 *G.* 2. *c.* 3. *ſ.* 3.

Unto what windows the ſame ſhall extend.

4. And every kitchen, ſcullery, buttery, pantry, larder, waſh-houſe, laundry, bakehouſe, brewhouſe, and lodging room, belonging to or occupied with any dwelling houſe, whether joined to it or not, ſhall be deemed part thereof, and the windows therein charged accordingly. 21 *G.* 2. *c.* 10. *ſ.* 1.

Alſo ſky lights, and windows or lights in ſtaircaſes, garrets, cellars, paſſages, and in all other parts of dwelling houſes, to what uſe ſoever applied, ſhall be charged. *ſ.* 2.

5. And where ſeveral windows are fixed in one frame; if the partition or diviſion between them is of the breadth of 12 inches, the window on each ſide of the partition ſhall be deemed a diſtinct window. 20 *G.* 2. *c.* 3. *ſ.* 38. Several windows in one frame.

6. And all windows in frames which ſhall give light into more rooms than one, ſhall be charged as ſo many ſeparate windows, as there are rooms inlightned thereby. 20 *G.* 2. *c.* 3. *ſ.* 38. Window inlightning two rooms.

7. And no windows or lights ſhall be deemed to be ſtopped up, unleſs it be done effectually with ſtone or brick, or plaiſter upon lath, or upon any other material commonly uſed to plaiſter upon, or with the ſame kind of materials whereof the outſide of the houſe doth chiefly conſiſt. 21 *G.* 2. *c.* 10. *ſ.* 11. Windows ſtopped up.

But this not extend to windows ſtopped up with any materials, before the year 1746. *ſ.* 12.

And if any occupier ſhall open any windows, after the aſſeſſments are ſettled, and warrants for collecting ſigned, without notice in writing to the ſurveyor, he ſhall forfeit 20*s.* 20 *G.* 2. *c.* 3. *ſ.* 39. by diſtreſs and ſale, *ſ.* 28. half of which fine ſhall go to the informer. 21 *G.* 2. *c.* 10. *ſ.* 15.

8. Where a houſe ſhall be inhabited by two or more perſons or families, it ſhall pay as if it was inhabited by one perſon or family only. 20 *G.* 2. *c.* 3. *ſ.* 31. Two families in one houſe.

9. Where any dwelling houſe is let in different apartments to ſeveral perſons, and the landlord of ſuch houſe pays other taxes and pariſh rates for the ſame; ſuch landlord ſhall be deemed the occupier of ſuch dwelling houſe, and be charged with the duties for the ſame, as one entire houſe. 20 *G.* 2. *c.* 3. *ſ.* 35. Houſe let in different apartments.

10. And the rates ſhall be charged only upon the inhabitants or occupiers, and not on the landlord who let or demiſed the ſame. 20 *G.* 2. *c.* 3. *ſ.* 5. Rates to be charged on the inhabitants.

11. Parents and guardians of infants, on default of payment by ſuch infants, ſhall be liable; and may be proceeded againſt as other perſons making default. *id. ſ.* 15. Infants how chargeable.

12. Each diſtinct chamber in a college or hall in the univerſities, ſhall pay as if it were an entire houſe paying to church and poor. *id. ſ.* 32. Colleges.

13. Every edifice in the inns of court or chancery, being ſeverally in the occupation of any perſon, ſhall pay for every window or light; but ſhall not pay the 2*s.* duty on houſes. 20 *G.* 2. *c.* 3. *ſ.* 33. 21 *G.* 2. *c.* 10. *ſ.* 18, 19. Inns of court.

14. Such dwelling houſes only, where the occupier, by reaſon of poverty only, is exempted from the uſual taxes to church and poor, ſhall be exempted from the duties; and that only in ſuch caſes where the dwelling houſes ſo occupied are cottages, not containing above nine windows in the whole. 20 *G.* 2. *c.* 3. *ſ.* 29. Cottages.

15. But every houſe whereof the keeping only is committed or left to a perſon or ſervant who pays not to church and Houſes left to ſervants.

poor, ſhall pay as if inhabited by the occupier or tenant. *id. ſ.* 33.

Obſtructing the aſſeſſor.

16. And if any perſon ſhall wilfully obſtruct or moleſt any aſſeſſor in the execution of his duty, he ſhall forfeit 5 *l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

Aſſeſſors to aſſeſs themſelves.

17. And the aſſeſſors ſhall aſſeſs themſelves and the commiſſioners, as other perſons are aſſeſſed. 21 *G.* 2. *c.* 10. *ſ.* 16.

Day for bringing in the aſſeſſments.

18. And the commiſſioners ſhall then and there prefix a day for the perſons to appear before them, and bring in their aſſeſſments in writing under their hands; ſetting forth therein the names and ſurnames of the ſeveral occupiers or inhabitants of each reſpective dwelling houſe chargeable, the number of windows or lights, and the ſeveral ſums they ought to pay. 20 *G.* 2. *c.* 3. *ſ.* 6.

Which day ſhall be on or before *June* 4. yearly. *ſ.* 7. (B.)

III. Third meeting; ſigning the aſſeſſment, with warrant to collect.

Aſſeſſment delivered in.

1. The aſſeſſors appearing at the day appointed, ſhall deliver in their aſſeſſments, to be verified upon their oaths, and not otherwiſe. 20 *G.* 2. *c.* 3. *ſ.* 6.

Returning the names of collectors.

2. And ſhall then return the names of two or more able and ſufficient perſons to be collectors, for whom the pariſh or place ſhall be anſwerable. 20 *G.* 2. *c.* 3. *ſ.* 6.

Signing the aſſeſſment.

3. At which time alſo, three or more of the commiſſioners ſhall ſet their hands to the aſſeſſments, teſtifying their allowance thereof. 20 *G.* 2. *c.* 3. *ſ.* 9.

Note; It is not neceſſary by the words of the act that the ſame ſhall be ſealed.

Appointing collectors.

4. And they ſhall alſo appoint two of the perſons named in the aſſeſſment, or any two others whom they ſhall think able and reſponſible, to be collectors. *id.* (C.)

Warrant to collect.

5. Alſo on delivery and return of the aſſeſſments, three or more commiſſioners ſhall, at leaſt ten days before the rates ſhall become due, iſſue their warrants or eſtreats under their hands and ſeals, to the collectors, for the ſpeedy collecting and levying the ſame, as they ſhall become due and payable. *id. ſ.* 7.

And they ſhall forthwith deliver the aſſeſſment ſo allowed of, to the collectors. *ſ.* 9.

Collector refuſing to act.

6. Collectors refuſing to take their offices, ſhall forfeit 5 *l.* 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3.

Appointing the time for appeal.

7. Then three or more commiſſioners ſhall alſo give the collectors notice when and where the appeals of any perſons who ſhall think themſelves over-rated, may be heard and determined. *id. ſ.* 12.

And all appeals which ſhall be made between *Mar.* 25. and *Aug.* 20. yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall be by them appointed between *Aug.* 20. and *Sep.* 15. And all ſuch other appeals as ſhall be made

made between *Sep.* 29. and *Jan.* 20. yearly, ſhall be heard and determined upon ſuch other days as ſhall be appointed between *Jan.* 20. and *Feb.* 10. 21 *G.* 2. *c.* 10. *ſ.* 7.

8. And where the commiſſioners ſhall have omitted to execute the powers to them given, within the time, and according to the manner above preſcribed, two or more of them may meet, and execute the ſame at any other times, as there ſhall be occaſion. 20 *G.* 2. *c.* 42. *ſ.* 1.

Remedy where the commiſſioners have omitted their duty.

9. At this third meeting likewiſe comes in the buſineſs of the ſurveyors, who ſhall be appointed by the king, or three commiſſioners of the treaſury; who ſhall appoint them ſuch ſalaries as they ſhall think reaſonable. 20 *G.* 2. *c.* 3. *ſ.* 30, 42, 43.

Surveyors to examine and ſurvey.

And they ſhall have power to examine the aſſeſſments, before they are ſigned and allowed by the commiſſioners; and at ſeaſonable times, with a conſtable, to view and examine whether there be any more windows than are aſſeſſed, and to paſs for that purpoſe thro' any houſe, to go into any court, yard, or backſide thereunto belonging, and externally to view the windows which cannot be conveniently ſeen or numbred without going thro' ſuch houſe: and this they may do twice a year. *id. ſ.* 30.

And the conſtables, and other his majeſty's officers, ſhall be aſſiſting; and ſhall alſo obey and execute the warrants of the commiſſioners to them directed. *id. ſ.* 22.

And if any perſon ſhall wilfully obſtruct or moleſt any ſurveyor in the execution of his duty, he ſhall forfeit 5 *l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

IV. Fourth meeting; the appeal.

1. Every collector ſhall, within ten days after notice from the commiſſioners of the time and place of appeal, cauſe publick notice to be given in every pariſh church or chapel within his diſtrict, immediately after divine ſervice, on the lord's day (if any ſuch divine ſervice ſhall be performed there within that time) of the time and place ſo appointed by the commiſſioners for hearing and determining appeals: And ſhall alſo, on the ſame day, cauſe the like notices to be fixed in writing on the door of ſuch church or chapel. 20 *G.* 2. *c.* 3. *ſ.* 12.

Notice of the appeal day to be given in the church.

2. And after the rates are ſigned and allowed by the commiſſioners, if the ſurveyor finds on his ſurvey, that any houſes or lights have been omitted, or are under-rated, he ſhall certify the ſame in writing under his hand, by way of ſurcharge, on or before *Aug.* 10. and *Jan.* 10. yearly, to any three or more commiſſioners, in order to have ſuch omiſſion or under rate certified in the aſſeſſment. 20 *G.* 2. *c.* 3. *ſ.* 37. 21 *G.* 2. *c.* 10. *ſ.* 6.

Surveyor to give in his ſurcharge.

And he ſhall alſo leave a written notice at the dwelling houſe of every occupier ſo ſurcharged, that he intends to charge them for ſuch number of windows or lights as are charged in ſuch certificate. 21 *G.* 2. *c.* 10. *ſ.* 6.

3. And every perſon intending to appeal ſhall give at leaſt ten days notice thereof in writing to the ſurveyor, or to one or more of the aſſeſſors. 21 *G.* 2. *c.* 10. *ſ.* 8.

Notice of appeal.

Assessment not to be altered but on a general appeal day.

4. And no assessment shall be altered or diminished, except only on hearing the appeal, upon a general appeal day. 21 *G.* 2. *c.* 10. *s.* 5.

Surveyor may be present.

5. And the surveyor, assessors, and appellant may be present during the time of hearing and determining the appeal, unless they misbehave. 21 *G.* 2. *c.* 10. *s.* 8.

Commissioner interested to withdraw.

6. And in case of any controversy arising between the commissioners concerning the assessments, the commissioners that shall be concerned therein shall have no voice, but shall withdraw during the debate, until it be determined by the rest of the commissioners. 20 *G.* 2. *c.* 3. *s* 21.

Surveyor to make oath that he gave notice.

7. The surveyor appearing to make good his surcharge, shall make oath that a written notice was left at the dwelling houses of the several occupiers so surcharged, that he intended so to surcharge them. 21 *G.* 2. *c.* 10. *s.* 6.

The parties to be examined on oath.

8. At the appeal, the commissioners shall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 *G.* 2. *c.* 3 *s.* 12.

And they shall not make any abatement of the charge or surcharge, unless it appear upon oath, that such person is over rated. 21 *G.* 2. *c.* 10. *s.* 8.

How far the appeal determined shall be final.

9. Appeals determined shall be final: Except that if the surveyor or appellant shall then declare himself dissatisfied with the determination of the commissioners, they shall, at such person's request, state specially and sign the case upon which the question arose, together with their determination thereupon, and cause the same to be delivered to the party, to be by him transmitted to one of the judges; who shall with all convenient speed return an answer, with his opinion subscribed; according to which, the assessment shall be altered or confirmed; provided that the determination of the commissioners shall stand, with respect to the payments which shall be due precedent to the opinion upon the case certified by the judge. 21 *G.* 2. *c.* 10. *s.* 9, 10.

V. Collecting.

Collector to make demand.

1. The collectors shall make demand of the parties chargeable, or at the places of their last abode, within ten days after the duties shall become due and payable. 20 *G.* 2. *c.* 3. *s.* 7.

And give receipts.

2. And on payment thereof, they shall give acquittances *gratis*; which shall be a full discharge to the person paying the same. *id.*

May distrain.

3. And if any person shall refuse to pay to the collector on demand, he may distrain such person by his goods; and shall keep the distress four days at the owner's cost; and if not paid in the said four days, then the distress shall be appraised by two inhabitants; and then sold by the officer; the overplus (if any) over and above the charges of taking and keeping the distress, to be immediately restored to the owner. *id. s.* 11.

And where any refusal, neglect, or resistance shall be made, it shall be lawful by warrant of three commissioners to break

open

open any house in the day time, calling in the constable to assist. *id.*

4. And if sufficient distress cannot be found, three commissioners by their warrant may commit any person who shall refuse or neglect to pay for 20 days after demand, to the common gaol, until payment shall be made. 20 *G.* 2. *c.* 3. *s.* 11. Commitment for want of distress.

5. Arrears may be levied by the commissioners in the same manner as the rates and duties. 21 *G.* 2. *c.* 10. *s.* 17. Levying arrears.

6. Where the occupier removes without paying the rates, the commissioners are to transmit a certificate thereof, to the commissioners where the person resides; who shall cause the same to be levied and paid to the collectors of the place from whence the person did remove. 20 *G.* 2. *c.* 3. *s.* 41. Occupier removing.

VI. Collector paying to the receiver.

1. The collectors shall pay in the money received, within ten days after receipt thereof, to the receiver general or his deputy, at such place as the commissioners shall appoint. 20 *G.* 2. *c.* 3. *s.* 7. Collector to pay to the receiver.

Provided that the collectors shall not be obliged to travel above ten miles from their habitations, to pay the money collected. *s.* 24.

2. Which receiver general shall give acquittances *gratis*; which shall be a full discharge to the collectors. 20 *G.* 2. *c.* 3. *s.* 21. Receiver to give acquittances.

3. And the said receiver general shall give notice of his appointment of a deputy (which appointment shall be under hand and seal) unto three or more commissioners, within 20 days after their first meeting, and within 20 days after the death or removal of any deputy. 20 *G.* 2. *c.* 3. *s.* 23. Deputy receiver.

4. Every collector shall have 3 *d.* in the pound, for what money he shall pay to the receiver general. *id. s.* 11. Collector to have 3 d. a pound.

5. And if the collector shall neglect or refuse to pay the money by him received, at the time appointed, three or more commissioners may imprison his person, and seize and secure his estate as well freehold as copyhold, and all other estate both real and personal to him belonging, or which shall come to his heirs, executors, or administrators: Which commissioners may appoint a time for a general meeting of the commissioners, giving publick notice thereof ten days before; and the commissioners at such general meeting may sell such estates, or any part of them, for payment. 20 *G.* 2. *c.* 3. *s.* 16. Collector failing.

And if there be any arrear, by reason of the failure of a collector for whom the parish or place is answerable, three commissioners may cause it to be re assessed in such parish or place. *id. s.* 34.

6. And the collectors shall deliver a schedule of arrears to the receiver general, to be by him returned into the exchequer, that process against the defaulters may be issued from thence. 20 *G.* 2. *c.* 3. *s.* 21. Returning arrears into the exchequer.

The receiver general returning any persons in arrear who have paid, shall forfeit double damages to the party, and double the sum to the the king. *s.* 25.

And no receiver shall return any person in arrear in his accounts, unless such account be passed in the exchequer, within two years after the end of the year for which such rate shall be payable, but the same shall be a debt on him and his securities. *s.* 26.

VII. Receiver paying into the exchequer.

Times of paying into the exchequer.

1. The receiver general shall pay the sum received into the exchequer, by four quarterly payments (*viz. June* 24. *Sep.* 29. *Dec.* 25. and *Mar.* 25,) or in 40 days after the respective quarterly pay days; on pain of 500 *l.* to him who shall sue. 20 *G.* 2. *c.* 3. *s.* 10.

Receiver's allowance.

2. And he shall have an allowance of 2 *d.* in the pound, for the money he shall pay into the exchequer. *s.* 11.

VIII. Duplicates to be transmitted into the exchequer.

Transmitting the duplicates.

The commissioners shall cause true duplicates of the assessments to be made out, within 3 months at fartherst after *March* 25. yearly; the appeals being first heard and determined. Such duplicates to be made for the same hundreds, wards, parishes, or places, for which distinct duplicates are and have been usually made out for the land tax; and the names and sirnames of the assessors and collectors respectively shall be inserted therein. 20 *G.* 2. *c.* 3. *s.* 10.

One of which duplicates shall be delivered to the receiver general, and another transmitted into the office of the king's remembrancer in the exchequer; for which the proper officers shall give acquittances *gratis*. *id.*

And the commissioners clerks shall not have the 1 *d.* ½ in the pound, until this be done. *s.* 11.

IX. General penalty on officers not doing their duty.

Penalty on the surveyor.

1. If any surveyor shall knowingly, thro' favour or malice, under rate or over rate, or omit to charge any person liable, or shall be guilty of any corrupt or illegal practice in the execution of his office; he shall forfeit 100 *l.* and his office. 20 *G.* 2. *c.* 3. *s.* 10.

On the assessor.

2. Assessor guilty of concealment or favour in assessing, shall forfeit not exceeding 5 *l.* nor under 40 *s.* *id. s.* 6.

On the collector.

3. Collector gathering by a rate not signed and allowed by the commissioners; or receiving rates from persons not charged therewith; or collecting from any person more than he is charged, and not paying the whole sum collected; or fraudulently altering any rate after being signed by the commissioners, shall forfeit 20 *l.* *id. s.* 36. by distress. *s.* 28.

4. And

4. And generally; If any assessor, collector, or other person appointed by the commissioners, shall wilfully neglect or refuse to perform his duty, three commissioners may fine him not exceeding 20 *l.* nor under 5 *l.* to be levied by distress, and charged amongst the rates to the receiver general. *id. s.* 21. On others.

5. And the penalties and forfeitures, for which no other way of levying is prescribed, shall be levied by warrant of three commissioners by distress, rendring the overplus, after deducting reasonable charges for distraining. *id. s.* 28. General method of levying the penalties.

X. Indemnity of officers in doing their duty.

Persons sued for any thing done in the execution hereof, may plead the general issue, and have treble costs. 20 *G.* 2. *c.* 3. *s.* 66. 21 *G.* 2. *c.* 10. *s.* 20. Treble costs.

A. Precept to the high constables to return assessors.

Westmorland { To *Henry Holme*, gentleman, high constable of the West Ward within the said county.

WE *the commissioners of the duties upon houses and windows for the said county, whose names are hereunto set, and seals affixed, do hereby require you forthwith upon the receipt hereof, to issue out your warrants to all the petty constables within your said Ward, according to the form hereupon indorsed. Given under our hands and seals the* ——— *day of* ——— *in the* ——— *year* ———

The form of the said warrant to be indorsed.

Westmorland / West Ward { To the constable of ———.

BY *virtue of a precept from the commissioners of the duties upon houses and windows for the said county to me directed, you are hereby required forthwith to give notice to the last collectors of the said duties within your constablewick, that they and every of them do personally appear before the said commissioners at* ——— *on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the same day, in order to be appointed assessors of the said duties for this present year, and at the same time to receive their charge, how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there to certify what you shall have done in the execution hereof. Given under my hand the* ——— *day of* ——— *in the year of our lord* ———

Henry Holme, *high constable.*

B. Appoint-

B. Appointment of assessors, with their charge.

Westmorland. WE *the commissioners of the duties upon houses and windows for the said county, whose names are hereunto set and seals affixed, do hereby nominate and appoint* ——— *to be assessors of the said duties within the township of* ——— *in the county aforesaid. And we do hereby require you the said assessors, to make your assessment for the same, according to the proportions of the last assessment for the said duties within your said township; but with such alterations therein as shall be necessary by reason of any new houses erected, or the number of windows in any house increased, or the removal and change of the inhabitants, or otherwise. And your said assessment you are to make out in writing, setting forth therein the names of the several occupiers or inhabitants, the number of windows or lights, and the sum which they ought to pay; and sign the same; and deliver the same to us upon oath at* ——— *in the county aforesaid, on* ——— *the* ——— *day of* ——— *in the forenoon of the same day. At which time and place you are also hereby required to return unto us the names of two or more able and sufficient inhabitants within your said township, to be collectors of the said assessment; and in the mean time to give notice unto them, that they do also then and there appear, to receive their appointment, nomination, and charge. Given under our hands and seals the* ——— *day of* ——— *in the year of our lord* ———

C. Appointment and charge of the collectors, with warrant to collect.

Westmorland. WE *the commissioners of the duties upon houses and windows for the said county, whose names are hereunto set and seals affixed, do hereby nominate and appoint* ——— *to be collectors of the said duties for the township of* ——— *in the said county, for this present year, and do hereby impower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause publick notice to be given in the church or chapel immediately after divine service on the lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the said duties will be heard and determined by the said commissioners at* ——— *And if any person shall neglect or refuse to pay the same unto you upon demand, you are hereby required forthwith to give notice unto us thereof, that such further proceedings may be had therein, as to law doth appertain. And the same when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to say,* ——— *deducting out of the last payment thereof,* 3 d. *for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and seals the* ——— *day of* ——— *in the year of our lord* ———

Wine.

1. NO wine (except of the growth of *Tuscany*, *Turkey*, or the *Levant*) shall be imported in flasks, bottles, or vessels, less than 25 gallons; on pain of forfeiting the same, or the value; half to the king, and half to him that shall seize or sue by the laws of excise, or in the courts at *Westminster*. 1 *G.* 2. *st.* 2. *c.* 17. *s.* 7, 8. In vessels of what size to be imported.

2. No wine shall be brought forth of *France*, but in *English* shipping, on pain of forfeiture. 5 *El.* *c.* 5. *s.* 11. To be imported in English shipping.

And the justices in sessions may determine offences against this act, by indictment or information. *s.* 30.

3. The king may issue commissions to license persons to sell wine by retail, to be drank as well within the house or other place of the party as without. 12 *C.* 2. *c.* 25. *s.* 2. Licence for retailing.

Which they may do for 21 years, or under, for a yearly rent, but no fine. *s.* 3.

And no person, not being so authorized, shall retail wine; on pain of 5 *l.* half to the king, and half to him that shall sue in any court of record. 12 *C.* 2. *c.* 25. *s.* 1.

4. The lord chancellor, lord treasurer, lord president, lord privy seal, and the two chief justices, or any three of them, shall yearly between *Nov.* 20. and *Dec.* 31. set the prices of wines sold in gross; so that proclamation be made thereof in term time in the court of chancery, or in the town where they shall be sold; and if any person shall offend against the said assessment, he shall forfeit for every vessel 40 *s.* half to the king, and half to the mayor if in a town corporate; and if not, to him that shall sue. 28 *H.* 8. *c.* 14. *s.* 2, 3. 37 *H.* 8. *c.* 23. *s.* 2. 12 *C.* 2. *c.* 25. *s.* 13. Setting the prices of wines.

And the justices of the peace, and mayors, may hear and determine the defaults of such offenders, and punish them by imprisonment, or otherwise, by their discretions. 28 *H.* 8. *c.* 14. *s.* 4.

And by the 37 *H.* 8. *c.* 23. If any person shall refuse to sell at the prices limited, the mayor and recorder and two ancient aldermen in *London*, being no vintners; and the mayor, aldermen, and other head officers elswhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and sell the same to the owner's use. *s.* 3.

5. No person selling wine shall mix wines together, nor with any other thing; on pain that the seller in gross shall forfeit 100 *l.* and the retailer 50 *l.* half to the king, and half to him that shall sue in any court of record. 12 *C.* 2. *c.* 25. *s.* 11. Adulterating wines.

6. By the 5 *An.* *c.* 27. 231 cubical inches shall be a wine gallon, 63 gallons a hogshead, 126 gallons a butt or pipe, and 252 gallons a ton. *s.* 17. Wine measure.

Wire. See Excise.

Witchcraft.

Witchcraft.

Witchcraft abolished.

1. BY the 9 *G.* 2. *c.* 5. No prosecution, suit, or proceeding, shall be commenced or carried on against any person for witchcraft, sorcery, inchantment, or conjuration, or for charging another with any such offence, in any court whatsoever. *s.* 3.

Pretending to witchcraft.

2. But if any person shall pretend to exercise or use any kind of witchcraft, sorcery, inchantment, or conjuration; or undertake to tell fortunes; or pretend from his skill or knowledge in any occult or crafty science, to discover where, or in what manner, any goods or chattels, supposed to have been stolen or lost, may be found; every person so offending, being convicted on indictment or information, shall suffer imprisonment for a year without bail or mainprize, and once in every quarter of the said year, in some market town of the proper county, upon the market day there, stand openly on the pillory for one hour, and also shall (if the court by which such judgment shall be given shall think fit) be obliged to give sureties for his good behaviour, in such sum, and for such time, as the said court shall judge proper, according to the circumstances of the offence, and in such case shall be further imprisoned until such sureties be given. *s.* 4.

Witnesses. See Evidence.

Women.

Concerning women considered as *wives*, or *femes covert*; see title **Wife**.

Concerning women having two husbands, or men two wives; see title **Polygamy**.

Concerning the ravishment of women, see title **Rape**.

For clandestine marriages, and counterfeiting marriage licences and registers; see title **Marriage**.

Carnally knowing a female child under ten.

1. IF any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, he shall be guilty of felony without benefit of clergy. 18 *El. c.* 7.

Taking a woman by force.

2. None shall take by force any maiden within age (that is, the age of 12 years, being the age of consent to marriage, 2 *Inst.* 182.) by her own consent nor without; nor any wife or maiden of full age, nor any other woman against her will; on pain of imprisonment for two years, and after, fine at the king's will. 3 *Ed.* 1. *c.* 13.

Forcing her to become bound.

3. If any person take by force, or otherwise, any woman sole, having any substance of lands, tenements, or moveable goods, and inforce her before she be set at liberty, to bind her self to

him by ſtatute or obligation; ſuch bond ſhall be void. 31 *H.* 6. *c.* 9.

4. Whereas women, as well maidens, as widows, and wives, having ſubſtances, ſome in goods moveable, and ſome in lands and tenements, and ſome being heirs apparent unto their anceſtors, for the lucre of ſuch ſubſtances, are oftentimes taken by miſdoers, contrary to their will, and after married to ſuch miſdoers, or to other by their aſſent, or defiled,—it is enacted, that what perſon that taketh any woman ſo againſt her will unlawfully, that is to ſay, maid, widow, or wife, that ſuch taking, procuring, and abetting to the ſame, and alſo receiving wittingly the ſame woman ſo taken againſt her will, and knowing the ſame, be felony; and that ſuch miſdoers, takers, and procurators to the ſame, and receitors, knowing the ſaid offence, ſhall be adjudged as principal felons. 3 *H.* 7. *c.* 2. And by the 39 *El. c.* 9. Benefit of clergy is taken away from the principals, procurers, and acceſſaries before.

The offence commonly called ſtealing an heireſs.

Upon the face of which ſaid ſtatute of the 3 *H.* 7. theſe things are required to make the offence felony; 1. That the maid, wife, or widow, have lands, or tenements, or moveable goods, or be an heir apparent. 2. That ſhe be taken away againſt her will. 3. That the taking was for lucre. And 4. That ſhe be married to the miſdoer, or to ſome other by his conſent; or be defiled (that is, carnally known.) For if theſe concur not, and be ſo laid in the indictment, the miſdoer is not a felon within this ſtatute, but otherwiſe to be puniſhed. 3 *Inſt.* 61. 1 *Haw.* 110.

The ſaid act makes not only the takers, but the procurers, and abettors of the felony, and receivers of the woman wittingly, knowing the ſame, to be all principal felons; the like whereof Lord *Coke* ſays he hath not found in any other ſtatute that he remembers. But by a conſtruction of the common law, they that receive the miſdoers, and not the woman, are acceſſaries only. 3 *Inſt.* 61, 62.

But thoſe who are only privy to the marriage, but no way parties to the forcible taking away, or conſenting thereto, are not within the ſtatute. 1 *Haw.* 110.

It is no manner of excuſe, that the woman at firſt was taken away with her own conſent; becauſe if ſhe afterwards refuſe to continue with the offender, and be forced againſt her will, ſhe may from that time as properly be ſaid to be taken againſt her will, as if ſhe had never given any conſent at all; for till the force was put upon her, ſhe was in her own power. 1 *Haw.* 110.

Alſo, it is not material, whether a woman ſo taken contrary to her will, be at laſt married or defiled with her own conſent, or not; if ſhe were under the force at the time. 1 *Haw.* 110.

In *Fulwood*'s caſe, *M.* 13 *C.* it was reſolved, that the woman taken away and married, may be ſworn and give evidence againſt the offender, who ſo took and married her, tho' ſhe be his wife *de facto*. 1 *H. H.* 661.

5. If any perſon above the age of 14 years, ſhall unlawfully take or convey, or cauſe to be taken or conveyed, any maid or woman child unmarried, being within the age of 16 years, out of

Taking a woman under 16.

of the poſſeſſion and againſt the will of her father, or mother, or guardian; he ſhall ſuffer two years impriſonment, or pay ſuch fine as ſhall be aſſeſſed by the court, half to the king, and half to the parties grieved. 4 & 5 *P. & M. c.* 8. *ſ.* 3.

H. 15 *G.* 2. *K.* againſt *Cornforth* and others. The court granted an information againſt the defendants, for taking away a *natural* daughter under 16, under the care of her putative father; being of opinion it was within this ſtatute. *Str.* 1162.

And if any perſon ſhall ſo take away, or cauſe to be taken away, *and deſiour*, any ſuch maid or woman child; or ſhall againſt the will or knowledge of the father, or if he is dead, of the mother having tuition of ſuch child, *contract matrimony* with her by letters, meſſages, or otherwiſe; he ſhall be impriſoned for five years, or pay ſuch fine as ſhall be aſſeſſed by the court, half to the king, and half to the parties grieved. *ſ.* 3.

And if any woman child or maiden, being above the age of 12 years, and under 16, ſhall conſent or agree to ſuch perſon ſo making ſuch contract of matrimony; the next of kin to her ſhall have, hold, and enjoy her lands during her life. *ſ.* 6.

But by the 26 *G.* 2. *c.* 33. No ſuit ſhall be had in any eccleſiaſtical court, in order to compel a celebration of marriage *in facie eccleſiæ*, by reaſon of any contract of matrimony whatſoever, whether *per verba de præſenti*, or *per verba de futuro*. And the marriage of any perſon under the age of 21, without the conſent of parents or guardians, ſhall be null and void.

Appeal by a woman.

6. In an appeal by a woman, the appellee cannot wage battel, but muſt put himſelf upon his country. 2 *Haw* 427.

Peereſſes how to be tried.

7. Peereſſes ſhall be tried as peers, for treaſon or felony. 20 *H.* 6. *c.* 9.

Woman ſtanding mute.

8. Women upon ſtanding mute, are liable to *pain fort & dure*, as men are. 2 *Haw.* 331.

Benefit of clergy.

9. A woman being convicted for an offence, for which a man may have his clergy, ſhall ſuffer the ſame puniſhment as a man ſhould ſuffer, that has the benefit of his clergy allowed; that is, ſhall be burnt in the hand, and further kept in priſon as the court ſhall think fit, not exceeding one year. 3 *W. c.* 9.

But ſhe ſhall have the benefit of the ſaid ſtatute but once. 4 & 5 *W. c.* 24. *ſ.* 13.

Judgment in treaſon and felony.

10. The judgment againſt a woman, in caſe of high treaſon is, not the ſame as againſt a man traytor, to be hanged, cut down alive, have the bowels taken out, and the body quartered; but to be drawn to the place of execution, and there burned:

And this alſo is the judgment againſt a woman, in caſe of petit treaſon; whereas the judgment againſt a man for petit treaſon is, that he ſhall be hanged:

But in caſe of felony, the judgment is the ſame againſt both man and woman, to be hanged by the neck till dead. 2 *Haw.* 444.

Plea of pregnancy.

11. It is clear, that if a woman quick with child be condemned either for treaſon or felony, ſhe may alledge her being with child in order to get the execution reſpited, and thereupon the ſheriff ſhall be commanded to take her into a private room, and to impanel

panel a jury of matrons to try and examine, whether ſhe be quick with child or not; and if they find her quick with child, the execution ſhall be reſpited till her delivery. But it is agreed, that a woman cannot demand ſuch reſpite of execution, by reaſon of her being quick with child, more than once. 2 *Haw.* 464.

12. Women are not obliged to appear at the torn or leet. 2 *Haw.* 57. Attending the torn and leet.

13. Mr. *Hawkins* ſeems to be of opinion, that a cuſtom of the inhabitnnts ſerving the office of conſtable by turns, is good; and that when it comes to the turn of a woman inhabitant, ſhe muſt procure one to ſerve for her. 2 *Haw.* 63. Serving the office of conſtable.

Wood.

1. IT is proper to inſert here in the firſt place, a clauſe in the ſtatute of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. both upon its own account, and its being referred to afterwards by ſubſequent ſtatutes; *viz. Where ſometime it chanceth, that one having a right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by verdict of the aſſize or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact; the towns near adjoining ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages.* Pulling down hedges of ground improved.

And by the 3 & 4 Ed. 6. c. 3. *Such perſon as ſhall bring an aſſize hereupon, and have judgment to recover, ſhall have his damages trebled by the judgment of the court.* ſ. 4.

One having a right to approve] Foraſmuch as the lord ought to divide the parts of the common improved, by the hedge, ditch, or other defence; now this clauſe provideth, that if perſons unknown, either in the night or otherwiſe, ſo ſecretly proſtrate the ditches, hedges, or other fences, as the lord cannot know againſt whom to bring his aſſize or other action; and the men of the towns next adjoining thereunto round about do not indict the miſdoers of the fact, thoſe next towns round about ſhall be diſtrained to make the hedge or ditch at their own coſt, and yield damages to the lord. 2 *Inſt* 476.

Indict] That is, indict him at the king's ſuit, either of a riot, force, or treſpaſs: But here it is demanded, what *time* have the next towns round about adjoining to indict the miſdoers, ſeeing here is no time appointed; and the anſwer is, that ſeeing no time is appointed, the law doth appoint (as in many caſes it doth) a year and a day for the indicting of the miſdoers; and by the indictment the lord ſhall know againſt whom to bring his action. 2 *Inſt.* 476.

The

The towns near adjoining shall be distrained to levy the hedge or dyke, at their own cost, and to yield damages] If the bordering towns do not within a year and a day indict the misdoers, then shall the lord or other party grieved bring his action upon this branch, against the towns bordering round about the town wherein the fact was done, and judgment shall be given, that they shall at their proper costs make the ditch or hedge, and yield damages; and after judgment given, they shall be distrained to make the hedge or ditch. 2 *Inst.* 477.

Cutting down woods wherein there is common of pasture.

2. By the 35 *H.* 8. *c.* 17. intitled, *The bill for the preservation of woods*, No person who shall have any woods or underwoods wherein others have common of pasture, shall cut down the same, until the fourth part thereof shall be set out and fenced by the lord with the assent of the major part of the tenants; and if they cannot agree, then two justices being thereunto appointed by the more number of the justices of the shire in their quarter sessions, shall set out the same. *s.* 7.

Burning coal wood; barking fruit trees.

3. If any person shall maliciously, willingly, and unlawfully burn, or cause to be burned, any heap of wood prepared, cut and felled, for making of coals, billets, or talwood; or bark any apple trees, pear trees, or other fruit trees; he shall forfeit to the party grieved treble damages by action of trespass at the common law, and also 10 *l.* to the king. 37 *H.* 8. *c.* 6. *s.* 4.

Robbing orchards; breaking hedges; pulling up fruit trees; spoiling wood growing.

4. Every person who shall rob any orchards or gardens; or break or cut any hedge, pails, rails, or fence; or dig, or pull up, or take up any fruit tree or trees in any orchard, garden, or elsewhere, to the intent to take and carry the same away; or shall cut or spoil any woods or underwoods, poles, or trees standing (the same not being felony by the laws of this realm); every such person, his procurers and receivers, knowing the same, being thereof convicted by confession, or oath of one witness, before one justice (or mayor), shall give to the party such recompence and satisfaction for damages, and within such time, as the said justice shall appoint; and the same to be only for the first fault: And if such offender shall be thought by the justice not able, or do not make such recompence, then he shall commit him to the constable where the offence shall be committed, or the party apprehended, to be whipped. And for every such offence for which the offender shall be eftsoons committed in form afore limited, the person so offending to receive the said punishment of whipping. 43 *El.* *c.* 7. *s.* 1.

And if the constable shall not by himself, or some other execute upon the offender the said punishment, the justice may commit him to the common gaol till he comply. *s.* 2.

Note, that *robbing of orchards* doth not seem to be comprehended in any other statute, so that the punishment thereof is restrained to this statute: But the other offences abovementioned are further punishable by other statutes hereafter following:

The same not being felony by the laws of this realm] The distinction in which case seemeth to be this; If they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but only

only a treſpaſs, for a man cannot ſteal part of the freehold; but if they be ſevered from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a treſpaſs only, but felony.

5. By the 15 *C.* 2. *c.* 2. The conſtable may apprehend, or cauſe to be apprehended, every perſon he ſhall ſuſpect having or carrying any burden of any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails, or hedgewood, broom or furze; ——— And by warrant of one juſtice (A) directed to any officer, ſuch officer ſhall have power to enter into and ſearch the houſes, outhouſes, yards, gardens, or other places belonging to the houſes of every perſon they ſhall ſuſpect to have any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails, or hedge wood, broom or furze; and where they ſhall find any ſuch, to apprehend the perſons ſuſpected for cutting and taking the ſame; And as well thoſe apprehended carrying, as thoſe in whoſe houſes or other places the ſame ſhall be found, to carry before one juſtice. And if ſuch perſon do not then and there give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice; or elſe ſhall not in ſome convenient time to be ſet by the ſaid juſtice, produce the party of whom he bought the ſame, or ſome credible witneſs to depoſe upon oath ſuch ſale thereof, he ſhall be convicted of cutting and ſpoiling the ſame, and puniſhed as by the ſaid act of the 43 *El.* and further by this act:

Hedge breaking, and other wood ſtolen.

That is to ſay, he ſhall for the firſt offence give the owner ſuch recompence or ſatisfaction (B) for damages, and within ſuch time, as the juſtice ſhall appoint; and over and above pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10*s.* as the juſtice ſhall think meet; and if he do not make ſuch recompence, and alſo pay the ſaid ſum to the poor, the ſaid juſtice ſhall commit him (C) to the houſe of correction not exceeding one month, or to be whipped (D) by the conſtable. And if he ſhall again commit the ſaid offence, and be thereof convicted as before, he ſhall be ſent to the houſe of correction for one month, and be there kept to hard labour. And if he ſhall again commit the ſaid offence, and be thereof convicted as before, he ſhall be deemed an incorrigible rogue.

But no perſon ſhall be puniſhed by this act, unleſs he be queſtioned in ſix weeks after the offence committed.

6. And by the ſaid act of the 15 *C.* 2. *c.* 2. Whoſoever ſhall buy any burdens of wood, or any poles or ſticks of wood, or any other the premiſſes, which may be juſtly ſuſpected to have been ſtolen or unlawfully come by; one juſtice (on complaint in ſix weeks as aforeſaid after the offence committed) may examine the matter on oath; and if he ſhall find that the ſame was bought of a perſon who might juſtly be ſuſpected to have ſtolen or unlawfully come by the ſame, and that the ſame was ſtolen or unlawfully come by, he may award the party who bought the ſame to pay treble value (E) to him from whom it was unlawfully taken; and in default of preſent payment, may iſſue his warrant to levy the ſame

Buying of ſtolen wood.

by diſtreſs (F), and in default of diſtreſs, to commit the party to gaol at his own charge, there to remain one month without bail.

Deſtroying wood growing, or the incloſures thereof.

7. If any perſon ſhall either by day or night, cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil, or carry away, any wood ſprings, trees, poles, wood, tops of trees, under woods or coppice woods, thorns or quickſets, without the conſent of the owner, or of the perſon chiefly intruſted with the care and cuſtody thereof; or ſhall break open, throw down, level, or deſtroy any hedges, gates, poſts, ſtiles, railing, walls, fences, dikes, ditches, banks, or other incloſure thereof; the owner may have ſuch ſatisfaction and recompence from the inhabitants of the pariſhes, towns, hamlets, villages, or places, joining on ſuch wood ſprings or wood grounds, and recover ſuch damages againſt ſuch place or places, and in the ſame manner and form as by the (above recited) act of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. Unleſs the offender, by ſuch pariſhes or places, be convicted in ſix months. 6 *G. c.* 16. *ſ.* 1.——This is to be underſtood, if the offender is not known.

But if the offender is known, then it is enacted as follows; *viz.* If any perſon ſhall in a riotous, open, tumultuous, or in a ſecret or clandeſtine manner, forcibly or wrongfully and maliciouſly, and without conſent of the owner, or perſon chiefly intruſted with the care thereof, cut down, deſtroy, break, bark, throw down, burn, take, deface, ſpoil, or carry away, any wood, or ſprings of wood, underwood, or coppice wood; or break open, throw down, level, or deſtroy any hedges, gates, poſts, ſtiles, rails, fences, ditches, banks, or incloſures of ſuch woods, woody grounds, coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quickſets; Two juſtices, or the juſtices in ſeſſions, on complaint made by any inhabitant of ſuch pariſh or place, or by the owner of the wood, or by any other, may cauſe the offender to be apprehended, and hear and determine the offence; and on conviction, ſhall commit (G) the offender to the houſe of correction to hard labour for three months, and where there is no houſe of correction, then to the priſon for four months, and ſhall alſo order the offender to be publickly whipped by the maſter of ſuch houſe of correction once a month, during ſuch three months, if it is in a borough; or in the market town where ſuch houſe of correction ſtands, or in the next market town next adjacent to ſuch houſe of correction, on the market day, between the hours of eleven and two. And where there is no houſe of correction, the ſaid juſtices ſhall order him to be whipt by the common hangman once a month, during ſuch four months, on the market day of ſuch borough, or on the market day of ſome town, between the hours of eleven and two. 1 *G. ſt.* 2. *c.* 48. *ſ.* 2. 6 *G. c.* 16. *ſ.* 2.

And before he ſhall be diſcharged, he ſhall find ſufficient ſureties for his good behaviour for two years. 1 *G. ſt.* 2. *c.* 48. *ſ.* 3.

Deſtroying plantations, or throwing down incloſures in the night.

8. By the 22 & 23 *C.* 2. *c.* 7. If any perſon ſhall in the night time, maliciouſly, unlawfully, and willingly deſtroy any plantations of trees, or throw down any incloſures; he ſhall forfeit to the party grieved, treble damages. *ſ.* 5.

And three juſtices (1 Q.) may enquire thereof, in ſix months, as well by a jury, as by examination of witneſſes on oath, or by any lawful ways, which to them ſhall ſeem meet. *ſ.* 6, 7.

9. If any perſon ſhall maliciouſly ſet on fire, or burn, or cauſe to be burnt, any wood, underwood, or coppice, or any part thereof; he ſhall be guilty of felony. 1 *G. ſt.* 2. *c.* 48. *ſ.* 4. Setting fire to wood.

10. By the 9 *G. c.* 22. commonly called the Black act, (which by the 24 *G.* 2. *c.* 57. hath continuance to *Sep.* 1. 1757, *&c.*) If any perſon ſhall unlawfully and maliciouſly cut down, or otherwiſe deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or ſet fire to any ſtack of wood; or forcibly reſcue any perſon in cuſtody for any the ſaid offences; or by promiſe or reward procure any to join him therein; he ſhall be guilty of felony without benefit of clergy. And the hundred ſhall anſwer damages. Deſtroying trees, or burning wood, by the Black act.

Which ſaid act is inſerted more at large in the title of that name.

11. By the 1 & 2 *P. & M. c.* 5. No perſon ſhall carry any wood out of the realm, on pain that the owner of the ſhip ſhall forfeit the ſhip and tackle; the owner of the wood, double value of the wood; and the maſter and mariners all their goods, and be impriſoned for a year. *ſ.* 2. Exporting wood.

And if any perſon ſhall carry any wood to any ſhip, to be tranſported; the owners, maſters, and mariners, ſhall forfeit in like manner. *ſ.* 3.

And if any perſon ſhall obtain of the king a licence to tranſport wood, and ſhall carry more than is contained in his licence; he ſhall forfeit treble value, and be impriſoned for a year. *ſ.* 4.

And they which have licence, ſhall lade all at one place certain; on pain of forfeiting all their goods and chattels. *ſ.* 5.

The ſaid forfeitures to be half to king, and half to him that ſhall ſue in any court of record: Moreover, all and ſingular juſtices of the peace, within three years after any offence committed, may hear and determine the ſame by a jury. *ſ.* 6.

A. Warrant to ſearch for ſtolen wood; on the 15 *C.* 2. *c.* 2.

Weſtmorland. { To the conſtable of ———.

WHEREAS A. I. *of* ——— *yeoman, hath this dey made cath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that divers quantities of wood, within the ſpace of ſix weeks laſt paſt, have been cut, taken, and carried away off and from his lands at* ——— *in the ſaid county* [or as the caſe ſhall be]; *and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that the ſaid wood, or part thereof, is concealed in the houſes, outhouſes, yards, gardens, or other places belonging to ſuch houſes, of* A. O. *of* ——— *yeoman, at* ——— *aforeſaid; Theſe are therefore*

fore to require you to enter into, and search the said houses, outhouses, yards, gardens, or other places belonging to such houses of him the said A. O. *at* ——— *aforesaid; and if on such search you shall there find any such wood, that then you apprehend the person in whose house, outhouse, or other place it shall be found, and bring him before me, or some other of his majesty's justices of the peace for the said county, that such proceedings may be had thereupon, as to law doth appertain. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year* ———

B. Order for satisfaction to the owner; on the 15 *C.* 2. *c.* 2.

Westmorland. WHEREAS A. I. *of* ——— *in the said county, yeoman, on the* ——— *day of* ——— *now last past, did make oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that on or since the* ——— *day of* ——— *now last past, a certain quantity of wood, the property of him the said* A. I. *at* ——— *in the parish of* ——— *in the county aforesaid, was cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did suspect, that* A. O. *of* ——— *in the said county, yeoman, did cut, spoil, take, and carry away the same; And whereas the said* A. O. *was on the* ——— *day of* ——— *now last past, apprehended by* A. C. *constable of* ——— *in the said county, carrying wood suspected to be stolen by him the said* A. O. [Or, *whereas a certain quantity of wood, suspected to be stolen, was this day, by virtue of my warrant for that purpose directed to the constable of* ——— *in the said county, found in the house* [or other place] *of the said* A. O. *at* ——— *aforesaid*] *And whereas the said* A. O. *being now brought before me, hath not given to me any satisfactory account how he came by the said wood, nor can produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof; therefore the said* A. O. *is convicted by me of cutting, spoiling, taking, and carrying away the said wood; And whereas also it is duly proved before me, that* A. I. *of* ——— *aforesaid, yeoman, was and is the owner of the said wood, and that the said offence was committed at* ——— *aforesaid, in the parish of* ——— *in the said county, I do therefore hereby order and appoint the said* A. O. *within the space of* ——— *days now next ensuing, to pay unto the said* A. I. *the sum of* ——— *in recompence and satisfaction for damages done unto him the said* A. I. *by him the said* A. O. *in cutting, spoiling, taking and carrying away the said wood; and I do also hereby order the said* A. O. *within the space of* ——— *days now next ensuing as aforesaid, to pay to the overseers of the poor of the parish of* ——— *aforesaid, for the use of the poor of the said parish, the sum of* 10 s. *for his said offence. Given under my hand and seal, at* ——— *in the said county, the* ——— *day of* ———

C. Commitment thereupon for non-payment.

Weſtmorland. { To the conſtable of ——— and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *now laſt paſt, did make oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that within the ſpace of ſix days then laſt paſt, a certain quantity of wood, the property of him the ſaid* A. I. *at* ——— *in the pariſh of* ——— *in the county aforeſaid, was cut and ſpoiled, and from thence taken and carried away; and that he had juſt cauſe to ſuſpect, and did ſuſpect, that* A. O. *of* ——— *in the ſaid county, yeoman, did cut, ſpoil, take, and carry away the ſame; And whereas the ſaid* A. O. *was on the* ——— *day of* ——— *now laſt paſt, apprehended by* A. C. *conſtable of* ——— *in the ſaid county, carrying wood ſuſpected to be ſtolen by him the ſaid* A. O. [Or, *whereas a certain quantity of wood, ſuſpected to be ſtolen, was on the* ——— *day of* ——— *now laſt paſt, by virtue of my warrant for that purpoſe directed to the conſtable of* ——— *in the ſaid county, found in the houſe* (or other place) *of the ſaid* A. O. *at* ——— *aforeſaid;*] *And whereas the ſaid* A. O. *on the* ——— *day of* ——— *now laſt paſt, having been brought before me, did not and could not give to me any ſatisfactory account how he came by the ſaid wood, nor could produce the party of whom he bought the ſame, nor any credible witneſs to teſtify upon oath the ſale thereof, and thereupon was by me convicted of cutting and ſpoiling the ſaid wood, and ordered to pay to the ſaid* A. I. *the owner of the ſaid wood, the ſum of* ——— *within* ——— *days then next enſuing, in recompence and ſatisfaction for damages, and alſo the ſum of* 10 s. *to the overſeers of the poor of the pariſh of* ——— *aforeſaid where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; And whereas it appears to me, that the ſaid ſeveral ſums have been duly demanded of him the ſaid* A. O. *but that he the ſaid* A. O. *hath refuſed, and doth refuſe to pay, and hath not yet paid the ſame, nor any part thereof: I do therefore hereby require you the ſaid conſtable of* ——— *aforeſaid, to convey the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive him into your cuſtody in the ſaid houſe of correction, and there to detain him for the ſpace of* ——— *days from the day of the date hereof. Herein fail you not. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

D. If inſtead of being ſent to the houſe of correction, he is ordered to be whipt, then ſay, ——— *I do therefore hereby command you the ſaid conſtable forthwith to receive the ſaid* A. O. *into your cuſtody, and to ſtrip him naked from the middle upwards, and whip him until his body be bloody.*

E. Order for the buyer of ſtolen wood, to pay treble damages; on the 15 *C.* 2. *c.* 2.

Weſtmorland. WHEREAS *it hath been duly proved before me* ——— *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of* ——— *yeoman, did within the ſpace of ſix weeks now laſt paſt, buy ſeveral burdens of wood, of* B. O. *of* ——— *yeoman, and that he the ſaid* B. O. *is juſtly ſuſpected to have ſtolen the ſame from* A. I. *of* ——— *yeoman, and that the ſaid wood, at the time when the ſaid* A. O. *ſo bought the ſame, was of the value of* 10s. *I do therefore hereby order that the ſaid* A. O. *do forthwith pay unto the ſaid* A. I. *the ſum of* 30s. *the ſame being treble value of the ſaid wood ſo by him bought as aforeſaid. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

F. Warrant of diſtreſs for non-payment of the ſame.

Weſtmorland. { ——— Here recite the order ——— Then ſay, *And whereas the ſaid* A. O. *hath not paid to the ſaid* A. I. *the aforeſaid ſum of* 30s. *nor any part thereof; Theſe are therefore to command you to levy the ſaid ſum of* ——— *upon the goods and chattels of the ſaid* A. O. *by diſtreſs and ſale thereof, and forthwith to pay the ſame unto the ſaid* A. I. *Given* &c.

G. Commitment for deſtroying trees; on the 1 *G. ſt.* 2. *c.* 48. and 6 *G. c.* 16.

Weſtmorland. { To the conſtable of ——— and to the keeper of the houſe of correction at ——— in the ſaid county.

FORASMUCH *as* A. O. *of* ——— *in the county aforeſaid, yeoman, is this day duly convicted before us* ——— *eſquires, two of his majeſty's juſtices of the peace for the ſaid county, for that he the ſaid* A. O. *on the* ——— *day of* ——— *now laſt paſt, at* ——— *aforeſaid, in the county aforeſaid, did wrongfully and maliciouſly cut down two aſh trees* [or as the caſe ſhall be] *the property of* A. I. *of* ——— *yeoman, without the conſent of him the ſaid* A. I. *the owner thereof, or of any other perſon chiefly intruſted with the care and cuſtody thereof; We do therefore hereby command you the ſaid conſtable to convey the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, in the county aforeſaid, and to deliver him to the keeper thereof, together with this precept. And we do alſo hereby require you the ſaid keeper of the ſaid houſe of correction, to receive him the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there keep to hard labour, for the ſpace of three months now next enſuing, and until he ſhall find ſufficient ſureties for his good behaviour for two years: And we do likewiſe hereby order you the ſaid keeper of the ſaid houſe of correction, publickly to whip him the ſaid* A. O.

A. O. *once in every month during the said three months, in the market town of* ——— *in the said county, on the market day there, between the hours of eleven and two. And for so doing, this shall be your sufficient warrant. Given under our hands and seals, at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year* ———

Wool. See **Woollen manufacture.**

Woollen manufacture.

CONcerning differences between clothiers and their servants or workmen, see title **Servants**.

I have nothing to do under this title, but to reduce it into some kind of order, out of the confusion of above an hundred statutes; for, to the honour either of the laws, or of the people, there hath not occurred in all the books, one adjudged case, throughout this extensive title. In truth, it is not the industrious labourer, but the idle and profligate, that doth create most trouble in the courts of law.

After having first premised, that in almost all the laws hereafter specified under this title, it is enacted, that if any person shall be sued for any thing done in putting them in execution, he may plead the general issue, and have treble costs; I shall reduce these statutes for the encouragement of the woollen manufacture, under the following heads:

I. I shall premise some statutes which are not general enough to be treated of more at large.

II. Concerning the winding of wool by the seller.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein also of fuller's earth.*

IV. Concerning cards for manufacturing of wool.

V. Concerning the deceitful working of woollen cloth.

VI. Concerning the fulling of cloth.

VII. Concerning the searching of cloth, and therein of the length, breadth, and weight thereof.

VIII. Concerning the dying of cloth.

IX. Concerning tenters, and the stretching of cloth.

X. Concerning the dressing of cloth.

XI. Concerning mixed or medley broad cloth in particular.

XII. Concerning the Yorkſhire *manufacture in particular.*

XIII. Concerning burying of the dead in woollen cloth.

XIV. Againſt importation of woollen cloth.

XV. Encouragement of the exportation of woollen manufactures.

I. Statutes not general enough to be treated of more at large.

7 *Ed.* 4. *c.* 1. Worſted weavers in *Norwich* and *Norfolk.*

12 *H.* 7. *c.* 1. Worſted, ſays, and ſtamins in *Norfolk.*

5 *H.* 8. *c.* 2. White ſtraits in *Devon.*

6 *H.* 8. *c.* 8. Straits in *Devon.*

14 & 15 *H.* 8. *c.* 3. Worſteds in *Yarmouth* and *Linn.*

14 & 15 *H.* 8. *c.* 11. Veſes in *Suffolk.*

25 *H.* 8. *c.* 18. Clothiers in *Worceſterſhire.*

33 *H.* 8. *c.* 3. Folding of cloths in *North Wales.*

33 *H.* 8. *c.* 16. Worſted yarn in *Norfolk.*

1 *Ed.* 6. *c.* 6. Worſted yarn in *Norfolk.*

5 & 6 *Ed.* 6. *c.* 24. Hats, dornecks, and coverlets in *Norwich* and *Norfolk.*

1 & 2 *P.* & *M.* *c.* 14. Ruſſels ſattens, ſattens reverſes, and fuſtians of *Naples*, in *Norwich.*

2 & 3 *P.* & *M.* *c.* 13. An act for the inhabitants of *Hallifax* to buy wools.

1 *El.* *c.* 14. Woollen cloths in divers towns in the county of *Eſſex.*

8 *El.* *c.* 7. Drapers, cottoners, and frizers of *Shrewſbury.*

14 *El.* *c.* 12. Drapers, cottoners, and frizers of *Shrewſbury.*

35 *El.* *c.* 10. *Devonſhire* kerſeys or dozens.

13 & 14 *C.* 2. *c.* 5. Stuffs in *Norfolk* and *Norwich.*

13 & 14 *C.* 2. *c.* 22. Bay making in the *Dutch* Bay-hall at *Colcheſter.*

22 & 23 *C.* 2. *c.* 8. *Kidderminſter* ſtuffs.

1 *G.* *ſt.* 2. *c.* 41. Bay making in *Colcheſter.*

9 *G.* *c.* 9. An act for the better qualifying the manufacturers of ſtuffs and yarn in the city of *Norwich*, and liberties thereof, to bear offices of magiſtracy in the ſaid city, and for regulating elections of ſuch officers.

3 *G.* 2. *c.* 8. Regulating elections in *Norwich.*

II. Concerning the winding of wool by the ſeller.

1. No man ſhall make any inwinding within the fleece, at the rolling up of his wool; nor put in the ſame, locks, pelt wool, tar, ſtones, ſand, earth, graſs, nor any dirt; and if he do, the party grieved may bring his action at common law of treſpaſs and deceit. 8 *H.* 6. *c.* 22.

2. No

2. No perſon ſhall wind any fleece not ſufficiently waſhed, except in counties where they do not uſe to waſh ſheep; nor ſhall wind within any fleece, clay, lead, ſtones, ſand, tails, deceitful locks, cot, cals, comber, lamb's wool, or any other thing whereby the fleece may be the more weighty, to the deceit and loſs of the buyer, (except where fleeces are ſold by number, and not by weight;) on pain that the ſeller ſhall forfeit 6 *d.* a fleece, half to the king, and half to him that ſhall ſue. 23 *H.* 8. *c.* 17.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein alſo of fuller's earth.*

1. To avoid frequent repetitions under this head, it may be proper to premiſe (once for all) theſe things following: Several things premiſed.

(1) Notwithſtanding the limitation of actions by the proſecutor in the following ſections, to one year after the offence committed; yet by a general clauſe 9 & 10 *W.* *c.* 40. The king may cauſe perſons guilty of exporting wool, woolfells, fuller's earth, or ſcouring clay, to be proſecuted at any time in three years. *ſ.* 9.

(2) That all actions, ſuits, and informations upon any act for preventing exportation of wool, wool fells, wool flocks, mortlings, ſhorlings, worſted, bay or woollen yarn, cruels, or wool ſlightly manufactured, or mattraſſes or beds ſtuffed with combed wool, or wool fit for combing, fuller's earth, fulling clay, tobacco pipe clay, or any other ſcouring earth or clay, from *Great Britain* or *Ireland*; or for preventing the exportation from *Ireland* into foreign parts, of cloth, ſerges, bays, kerſeys, frizes, druggets, ſhalloons, ſtuffs, cloth ſerges, or any other drapery made of or mixed with wool, manufactured in *Ireland*,——may be entred and proſecuted (except as is herein after otherwiſe expreſſed) in any court of record at *Weſtminſter*, or in the court of exchequer in *Scotland*, or at the quarter ſeſſions of the peace, or before any two juſtices out of ſeſſions in a ſummary way, or in *Ireland* by any law relating to the revenue. And if the property be claimed by any perſon, the proof ſhall lie upon him, and not on the officer or ſeizer. 12 *G.* 2. *c.* 21. *ſ.* 18.

Which clauſe hath enlarged this article very much; by bringing in all thoſe ſtatutes, with which the juſtices before had nothing to do.

(3) And if the proſecution is in any court of record at *Weſtminſter*, for any of theſe offences, in or before the ſtatute of the 10 & 11 *W.* *c.* 10. a *capias* ſhall iſſue after the firſt proceſs, ſpecifying the ſum of the penalty ſued for; and ſuch perſon ſhall give good bail to the officer ſerving the proceſs, to appear to anſwer to the proſecution; and at the time of appearance ſhall give bail in court, to pay the penalties if convicted, or yield his body to priſon. *ſ.* 20.

And if any perſon ſhall be in priſon for want of bail, for exportation of wool or wool fells (or for aiding or abetting the ſame, 12 *G.* 2. *c.* 21. *ſ.* 27.) and ſhall refuſe to appear or plead to a declaration

claration or information to be delivered to him or to the gaoler, by the ſpace of one term, judgment ſhall be entred againſt him by default; and if judgment be ſo obtained againſt him by default, (or by verdict, or otherwiſe), and he pay not in three months the ſum recovered, the court ſhall order him to be tranſported for ſeven years. 4 *G. c.* 11. *ſ.* 6.

(4) And to prevent colluſive ſeizures, or fraudulent agreements to evade the penalties, None but officers of the cuſtoms, exciſe, or ſalt, except the officers of the guard ſhips hereafter mentioned, ſhall enter informations of ſeizure of wool or woollen goods; which ſhall be proſecuted in their, or in the attorney general's name, and not otherwiſe. 12 *G.* 2. *c.* 21. *ſ.* 14, 15.

And if ſuch officer make any ſuch colluſive ſeizure, or fraudulent agreement, he ſhall forfeit 200 *l.* and be diſqualified for any office in the revenue; and the owner making ſuch agreement with him, ſhall forfeit treble value; to him who ſhall ſue in the courts at *Weſtminſter*, *Dublin*, or *Edinburgh*. *id. ſ.* 16.

But if any perſon concerned in ſuch fraudulent ſeizure or agreement, ſhall firſt (in three months) diſcover his offence to the commiſſioners of the cuſtoms, ſo that one accomplice be convicted; he ſhall be diſcharged of the penalties, and ſhall have the whole money recovered on the conviction (the charges firſt deducted). *ſ.* 17.

And if any perſon ſhall oppoſe or hinder any the ſaid officers, or their aſſiſtants, in ſeizing any the goods before mentioned; or if any perſon armed, or diſguiſed, ſhall attempt to reſcue any the ſaid goods ſeized; he ſhall be tranſported for ſeven years. *ſ.* 26.

And moreover, if any perſon offer a bribe to any officer for connivance; he ſhall forfeit 300 *l.* to him who ſhall ſue in any court of record at *Weſtminſter*. *ſ.* 25.

(5) On condemnation of any wool, or other goods abovementioned, the commiſſioners of the cuſtoms reſpectively ſhall cauſe them to be publickly ſold to the beſt bidder, where they ſhall think proper; and out of the produce of ſuch ſale, ſhall cauſe the charges of condemnation and ſale to be paid, and the remainder to ſuch perſon who ſhall ſeize, inform, or ſue. 12 *G.* 2. *c.* 21. *ſ.* 20.

But if the officers ſhall receive information from any perſon, whereby any ſeizure is made, or any proſecution effected; ſuch informer ſhall have half of what ſhall be recovered. *ſ.* 21.

And if any perſon convicted in the penalty of 3 *s.* a pound (hereafter mentioned) be not able to pay; the commiſſioners may cauſe 1 *s.* a pound to be paid to the informer or proſecutor, by the receiver of the revenue. *ſ.* 22.

And for the proſecutor's further encouragement, by the 19 *G.* 2. *c.* 34, hereafter following, If on an information for ſeizure of wool (during the continuance of the ſaid act) a verdict is found for the claimer; yet if the judge ſhall certify upon the record, that there was propable cauſe of ſeizure, the claimer ſhall have no coſts. *ſ.* 16.

Exporting of wool, felony.

2. By the 13 & 14 *C.* 2. *c.* 18. The exportation of wool was made felony; but this was repealed by the 7 & 8 *W. c.* 28. and the preamble to the repealing clauſe ſets forth, that by the ſeverity of the penalty, the proſecution of offenders had not been

been so effectually put in execution. But it doth not appear, why a reward for the informer or prosecutor was not thought of at that time.

3. By the 12 *C.* 2. *c.* 32. No person shall export, nor pack or load upon any horse, cart, or carriage, nor lay on board, with intent to export, any wool, wool fells, mortlings, shorlings, or any yarn made of wool, or any wool flocks, or any fuller's earth, or fulling clay; on pain of forfeiting the same, and that every offender shall forfeit moreover 3 *s.* for every pound weight thereof. *s.* 1, 3. Pecuniary and other penalties and forfeitures.

(By the 7 & 8 *W.* *c.* 28. which, by the way, is a confused and ill penned act, another penalty is appointed, to wit, the forfeiture of such goods, and treble value, with treble costs; so that it seemeth, the offender may be prosecuted either for the wool and 3 *s.* a pound, or for treble value with treble costs.)

And the owner of the ship, knowing the offence, shall forfeit all his interest in the ship and furniture. 12 *C.* 2. *c.* 32. *s.* 3. 7 & 8 *W.* *c.* 28. *s.* 8.

And the master and mariners, knowing the offence, and assisting thereunto, shall forfeit all their goods and chattels, and be imprisoned three months. 12 *C.* 2. *c.* 32. *s.* 3.

And by the 6 *G.* *c.* 21. If the master, purser, or other person taking charge of the ship shall suffer any of the said goods, or any tobacco pipe clay, to be taken in from shore, to be carried beyond sea, he shall besides any former penalties, be imprisoned six months. *s.* 32.

But if any master, mate, or mariner, shall in six months give an account to the commissioners of the customs, of such ship, and goods, and offenders, so as any may be convicted; he shall be indemnified, and shall have moreover three fourths of the penalties recovered, clear of charges, and the king shall have the other fourth, charges deducted. 12 *G.* 2. *c.* 21. *s.* 23.

And any merchant, or other person, offending herein, shall be disabled to require any debt or account belonging to him from any factor or other. 12 *C.* 2. *c.* 32. *s.* 4.

And the said offences may be tried either in the county where the goods were packed, loaden, or laid aboard, or where the offender is apprehended. 12 *C.* 2. *c.* 32. *s.* 5.

And the ship, if an alien, or person not inhabiting in *England*, be the owner or part owner thereof, shall be forfeited to the king. 12 *C.* 2. *c.* 32. *s.* 9.

And all persons aiding or assisting therein, being convicted in one year, shall suffer three months imprisonment. 7 & 8 *W.* *c.* 28. *s.* 10, 11. Provided, that the first three persons, who have been aiding or assisting (not being owners or part owners thereof) who shall inform any justice of the peace of such offence, whereby the penalties may be recovered, shall not suffer such penalty. *s.* 11.

And moreover, all such exportation shall be deemed a publick nusance. 13 & 14 *C.* 2. *c.* 18. *s.* 11.

4. And no coverlids, waddings, or other manufactures, slightly wrought, so as they may be reduced to wool again; or mattrasses or beds stuffed with combed wool, or wool fit for combing, shall be Exporting wool slightly wrought.

be exported from *Great Britain* or *Ireland*; on the like pain as for exporting wool. 12 *G.* 2. *c.* 21. *f.* 9.

Exporting fuller's earth in the name of tobacco pipe clay.

5. And whereas fuller's earth, or fulling clay, is exported under colour of tobacco pipe clay, therefore no tobacco pipe clay shall be exported, on pain of 3 *s.* a pound. 13 & 14 *C.* 2. *c.* 18. *f.* 8.

Exporting fuller's earth into Ireland.

6. Nor shall any fuller's earth, or scouring clay, be exported into *Ireland*; on pain of 1 *s.* a pound. 9 & 10 *W.* *c.* 40. *f.* 2.

Exporting wool to Jersey, Guernsey, &c.

7. Nevertheless, wool may be exported from *Southampton*, to *Jersey*, *Guernsey*, *Sark*, and *Alderney*, for the sole use of the inhabitants there; so as the person shipping the same deliver to the customer of the port, a writing under the seal of the governor of the island, or his deputy, setting forth that such person is authorized to export thither such a quantity, and that he hath entred into bond to land it there; and so as it exceed not in one year to *Jersey* 4000 tods, *Guernsey* 2000, *Alderney* 400, and *Sark* 400; every tod not exceeding 32 pounds. 12 *C.* 2. *c.* 32. *f.* 12, 13, 14. 1 *W.* *c.* 32. *f.* 14.

Packing of wool.

8. And no wool, wool fells, mortlings, shorlings, wool flocks, worsted, bay or woollen yarn, shall be packed up in any box, barrel, cask, case, chest, or any other package, but only in packs of leather or packcloth; on which shall be marked on the outside the words WOOL or YARN, in large letters not less than three inches long: on pain of forfeiting the same, and the package, and 3 *s.* for every pound weight, to be paid by the owner or packer. 12 *G.* 2. *c.* 21. *f.* 10.

To be carried only by day.

9. And no wool, wool fells, mortlings, shorlings, woollen yarn, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, shall be carried by land, but in the day timely only, namely, from *Mar.* 1. to *Sep.* 29. between four in the morning, and eight at night; and from *Sep.* 29. to *Mar.* 1. between seven in the morning, and five at night: on pain of forfeiting the same or the value. 13 & 14 *C.* 2. *c.* 18. *f.* 9.

Carrying wool from port to port, or by land near the coast.

10. Every owner of wool, who shall carry, or cause to be carried any wool (wool fells, mortlings, shorlings, yarn made of wool, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, 5 *G.* *c.* 11. *f.* 14.) to any port or place on the sea coast, with intention to convey the same to any other port or place on the coast, from whence the same may be carried off to foreign parts; shall first cause an entry thereof to be made at the port, from whence it is intended to be conveyed, containing the weight, mark, and number, before he carry the same within five miles of such port: on pain of forfeiting the same, and also the horses, carts, and other carriages; and also of suffering and forfeiting, as by the other laws in force against the exportation of wool. 1 *W.* *c.* 32. *f.* 2.—But this shall not hinder any person from carrying his wool home from the place of shearing, tho' it be within five miles of the sea; provided that in ten days after shearing, and before he remove the wool, he do under his hand certify to the next officer of the customs, the true number of fleeces, and where it is housed; and do not remove the same, without certifying to such officer, under his hand, his intention so to do, three days before. 1 *W.* *c.* 32. *f.* 3.

And

And no wool, wool fells, mortlings, ſhorlings, wool flocks, worſted, bay or woollen yarn, worſted yarn, cruels, or wool ſlightly manufactured, ſhall be put on board any veſſel, to be carried coaſtwiſe, or from one port to another in *Great Britain* or *Ireland*, without notice given to the officers of the port, and bond given for the landing thereof, and a licence taken from ſuch officers for ſo doing; on pain of forfeiting the ſame, with the veſſel and furniture; and the bond to be ſued, if a certificate of landing the goods is not brought in ſix months. 12 *G.* 2. *c.* 12. *ſ.* 11.

And to prevent colluſive landing, none of the ſaid goods, carried coaſtwiſe, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3 *s.* for every pound, to be paid by the owner. *id. ſ.* 13.

And all cocquets for carrying wool from any port, ſhall be written on paper, and not parchment (to prevent eraſing), and ſigned by three officers of the port; and all certificates of landing the ſame again in any other port, ſhall be ſigned in like manner: And all ſuch wool, both at ſhipping and landing, ſhall be weighed in the preſence of the ſaid officers; and the weight, marks, and number of ſuch wool ſo ſhipped and landed, ſhall be expreſſed both in cocquet and certificate. 1 *W.* *c.* 32. *ſ.* 4.

And a regiſter ſhall be kept at the cuſtom houſe, *London*, of all the wool ſent from port to port in this kingdom, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W.* *c.* 32. *ſ.* 11.

And officers not obſerving the directions of this act, ſhall be deemed abettors of the exportation. *id. ſ.* 5.

In Kent and Suſſex: Every owner of wool, within 10 miles of the ſea, ſhall give an account in writing, in three days after ſhearing, of his number of fleeces, and where lodged, to the next officer of the cuſtoms; and the like notice, before he remove any part thereof, of the number of fleeces and weight, and the name and abode of the perſon to whom it is diſpoſed, and the place whither intended to be carried; and ſhall take a certificate from the officer who firſt entred the ſame (paying 6 *d.*); on pain of forfeiting the wool, and alſo 3 *s.* for every pound thereof, as if it had been actually exported. 9 & 10 *W.* *c.* 40. *ſ.* 3.—And no perſon within 15 miles of the ſea, in the ſaid counties, ſhall buy any wool, before he enters into bond to the king, with ſureties, that all the wool he ſhall buy, ſhall not be ſold by him to any perſon within 15 miles of the ſea; and if any wool be found carrying towards the ſea ſide, in the ſaid counties, unleſs it be firſt entred, and ſecurity given, it ſhall be forfeited, and the offender ſhall alſo forfeit 3 *s.* a pound. *id. ſ.* 4.——And no wool removed from the place where it was firſt lodged after ſhearing, within ten miles, ſhall be lodged, after the firſt removing, within 15 miles of the ſea in the ſaid counties; on pain of forfeiting all ſuch wool, if found; but if carried away, the owner ſhall forfeit 3 *s.* a pound. *id. ſ.* 5.——And every perſon that ſhall lay any wool within 15 miles of the ſea, and not entred as aforeſaid, all ſuch wool ſhall be ſeized and forfeited; and every perſon claiming the ſame (upon ſuch ſeizure) ſhall give ſurety in the exche-

quer,

quer, if he ſhall be caſt upon trial, to pay treble coſts, over and above the ſaid penalties. *id. ſ* 6.

And no wool, wool fells, mortlings, ſhorlings, woollen yarn, wool flocks, fuller's earth, or ſcouring clay, ſhall be loaden on any horſe or carriage, or carried by land, within 15 miles of the coaſt, but between ſun riſing and ſun ſetting; on pain of forfeiting the ſame, and the horſes and carriages. *id. ſ.* 8.

Hundred to forfeit treble value.

11. And the hundred next adjoining to the ſea coaſts, out of or thro' which the ſame is carried or exported, ſhall forfeit 20*l.* if the wool ſo carried out or exported ſhall be under the value of 10*l.* but if of greater value, then treble the value thereof, with treble coſts; to be ſued for within a year. 7 & 8 *W. c.* 28. *ſ.* 8. 12.

The execution to be againſt any two of the inhabitants; and the ſeſſions ſhall make an aſſeſſment to reimburſe them, as in caſes of robbery. *ſ.* 9.

And any perſon compounding with the hundred for leſs, ſhall be impriſoned five years, and another perſon may proſecute. *ſ.* 13.

And the owner of the wool, or of any other the commodities aforeſaid, and every perſon aiding in carrying or exporting any of them out of the kingdom, ſhall anſwer ſuch treble value to the ſaid inhabitants, as alſo treble coſts; to be recovered by them in the name of the clerk of the peace, in any court of record at *Weſtminſter*. *ſ.* 10.

Riotous exportation.

12. By the 19 *G.* 2. *c.* 34. which hath continuance for ſeven years, *&c.* If any perſons armed, to the number of three or more, ſhall be aſſembled to aſſiſt in the illegal exportation of wool, or in the carrying of wool in order to exportation, or in reſcuing the ſame after ſeizure, or in reſcuing an offender herein, or preventing his being apprehended, or ſhall be aiding in any the premiſſes; or if any perſon ſhall have his face diſguiſed when paſſing with ſuch wool, or ſhall forcibly hinder or aſſault any officer in ſeizing the ſame, or dangerouſly wound any ſuch in attempting to go on board any veſſel, or ſhoot at or wound him when on board in execution of his office,—he ſhall be guilty of felony without benefit of clergy.

And if information, ſubſcribed, and on oath, be made hereof before a juſtice of the peace; he ſhall forthwith certify the ſame under hand and ſeal, and return the information to a ſecretary of ſtate, who ſhall lay the ſame before the king in council; and the king thereon may make order, in two ſucceſſive gazettes, for the offender to ſurrender in 40 days to ſome juſtice of the peace (who ſhall thereon commit him): The ſame order to be ſent to the ſheriff; who ſhall in 14 days after receipt, cauſe it to be proclaimed, between the hours of 10 and 12, on the market days, in two market towns near to the place where the offence was committed, and a copy thereof to be affixed in ſome publick place in ſuch market towns. And if he ſhall not ſurrender, or eſcape after ſurrender, he ſhall likewiſe be guilty of felony without benefit of clergy.

But if he ſhall be taken before the time of ſurrender, he ſhall have a legal trial.

And

And if after the time of ſurrender, any perſon ſhall knowingly harbour him, he ſhall, on proſecution within a year, be guilty of felony, and be tranſported for ſeven years.

And if any officer in ſeizing the wool, or endeavouring to apprehend offenders, be beaten or killed, or the wool ſeized be reſcued, the hundred ſhall anſwer damages, as in caſes of robbery, not exceeding 40 *l.* for any beating, nor 200 *l.* for loſs of the wool; and ſhall pay 100 *l.* to the executor or adminiſtrator of ſuch perſon killed: Provided that notice of the offence be given to, or left at the houſe of ſome conſtable near the place, as ſpeedily as conveniently may be, deſcribing the offender, time, and place; and alſo, in four days, to two inhabitants near; and in eight days, oath be made before a juſtice, whether he knows the offender, and if he does, entring into recognizance to proſecute; and in 20 days, like notice be given in the gazette; and 100 *l.* bond, with two ſureties, be given before the ſheriff, to the high conſtable, to pay coſts, if caſt; and provided, that an offender is not convicted in ſix months; and that the action be commenced within a year.

And if any perſon ſhall be maimed or grievouſly wounded in apprehending ſuch offender, he ſhall have moreover a further reward of 50 *l.* to be paid by the commiſſioners of the cuſtoms or exciſe.

And the executors or adminiſtrators of ſuch perſon killed, ſhall have from them 100 *l.* over and above what is paid by the hundred.

And if any perſon ſhall take an offender advertiſed, and not ſurrendred, and bring him before a juſtice of the king's bench, or juſtice of the peace for *London* or *Middleſex*, (to be by them committed to *Newgate*), he ſhall receive 500 *l.* reward, from the ſaid commiſſioners.

And an offender, not outlawed, apprehending an outlawed accomplice, ſhall have a pardon, and alſo the reward.

And an offender, not outlawed, convicting two accomplices not outlawed, ſhall have a pardon, and 50 *l.* for each.

Exporting wool out of Ireland in particular.

13. By the 26 *G.* 2. *c.* 11. It ſhall be lawful for any perſon, to export from any port in *Ireland*, any wool, or woollen or bay yarn, wool fells, ſhortlings, mortlings, wool flocks, and worſted yarn, to any port in *Great Britain*.

But no perſon ſhall export, or load, or ſhip, with intent to export, any wool, wool fells, ſhortlings, mortlings, or any woollen cloth or manufacture, out of *Ireland*, except it be into *Great Britain*; on pain of forfeiting the ſame, and the ſhip, and alſo 500 *l.* and the maſter, mariners, and others aſſiſting, 40 *l.* 10 & 11 *W.* *c.* 10. *ſ.* 1, 2.

But the firſt three perſons, not being owners or part owners, who have been aiding in exporting the ſame, that ſhall inform any juſtice of the peace, whereby the penalties may be recovered; ſhall be freed from all penalties for the ſame. 3 *G.* *c.* 21. *ſ.* 5.

And bond of double value of the goods ſhall be given to the officers of the cuſtoms, for every ſhip exporting the ſame, that they ſhall be landed in *Great Britain*. 10 & 11 *W.* *c.* 10. *ſ.* 5.

And

And no wool, or any of the ſaid goods, ſhall be brought into *Great Britain* from *Ireland*, but in ſhips of the built of *Great Britain* or *Ireland*; on pain of forfeiting the goods, or the value, together with the ſhip and furniture. 12 *G.* 2. *c.* 21. *ſ.* 6.

And to prevent colluſive landing, none of the ſaid goods imported from *Ireland*, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3 *s.* for every pound, to be paid by the owner. *id.* *ſ.* 13.

And the commiſſioners of the cuſtoms in *Ireland*, ſhall every ſix months tranſmit to the commiſſioners of the cuſtoms in *England*, an account of wool exported, from whence, the quantity and weight, by whom, in what ſhip, where conſigned, names of the perſons in *England* ſigning certificates of landing the ſame, with the dates of ſuch certificates, and where landed, and the quantity and weight contained in the certificates: Which certificates ſhall not be obliterated or interlined, and ſhall be written on paper and not parchment. 7 & 8 *W.* *c.* 28. *ſ.* 6, 7.

And a regiſter ſhall be kept at the cuſtom houſe, *London*, of all the wool imported from *Ireland*, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W.* *c.* 32. *ſ.* 11.

Guard ſhips.

14. The commiſſioners of the admiralty ſhall appoint 2 fifth rate ſhips, 2 ſixth rates, and 8 armed ſloops, conſtantly to cruiſe on the coaſts, particularly between the north of *Ireland* and *Scotland*, with orders to ſeize all ſhips exporting wool to foreign parts. And all wool, and veſſels ſo ſeized ſhall be forfeited, and the wool lodged in the king's warehouſe till condemned; and then the ſame after 21 days (together with the veſſels ſo condemned) ſhall be ſold by inch of candle, notice being firſt given at the cuſtom houſe of the port where lodged, and on the *Royal Exchange* at *London*; one fourth of the produce to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king (charges of proſecution and condemnation being firſt paid out of the king's part.) And the commander neglecting his duty herein, ſhall forfeit his wages, and office, and be impriſoned ſix months. 10 & 11 *W.* *c.* 10. *ſ.* 16, 17, 18.

And they ſhall alſo appoint 3 ſixth rate ſhips, and 8 or more armed ſloops, to cruiſe on the *Britiſh* and *Iriſh* coaſts, with orders for ſeizing all ſhips wherein any woollen manufactures are exported from *Ireland*; which ſhips and goods ſhall be forfeited, one fourth to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king, the charges being firſt paid out of the king's part. But if the ſeizure was at the information of any perſon, ſuch informer ſhall have a fifth part, and the reſidue be diſtributed as above. 5 *G.* 2. *c.* 21. *ſ.* 1, 2, 3.

Exporting wool or woollen manufactures, from America.

15. No wool, or woollen manufactures, ſhall be exported from any of the *American* colonies, on the like pain as from *Ireland*. 10 & 11 *W.* *c.* 10. *ſ.* 19.

Inſuring wool to be landed in foreign parts.

16. Perſons inſuring wool, and other the ſaid goods, to be landed in foreign parts, and alſo perſons agreeing to pay the money for ſuch inſuring, ſhall forfeit 500 *l.* to him who ſhall ſue in any

court of record at *Weſtminſter*, in the name of an officer of the cuſtoms, exciſe, or ſalt, or of the attorney general. 12 *G.* 2. *c.* 21. *ſ.* 29, 30, 32.

And the inſurer informing ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party; and ſhall alſo keep the inſurance money paid to him: And the inſured informing ſhall receive back his inſurance money if paid; and if not paid, ſhall be indemnified from paying it; and ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party. *id. ſ.* 31.

And all inſurances of wool, and woollen goods, and other the goods before mentioned, ſhall be void. *id. ſ.* 33.

IV. Concerning cards for the manufacturing of wool.

No foreign wool cards, or card wyre, ſhall be imported, or uſed; nor ſhall any wyre be taken out of old cards, and put into new leather and boards, nor any cards made thereof be put to ſale; on pain of forfeiting the ſame, or the value thereof if the ſame be not ſeized, half to the king, and half to him that ſhall ſeize or ſue for the ſame in any court of record at *Weſtminſter*, or within the county, city, or town corporate, where the offence ſhall be committed. 13 & 14 *C.* 2. *c.* 19.

V. Concerning the deceitful working of woollen cloth.

1. No perſon ſhall put any hair, flocks, thrums, or yarn of lamb's wool, or other deceivable thing in any woollen cloth, on pain of forfeiting the ſame; and the perſon procuring ſuch deceitful thing for that purpoſe, ſhall likewiſe forfeit the ſame; half to the finder, and half to the poor. 43 *El. c.* 10. *ſ.* 2, 12.

2. But in the caſe of *broad* cloath, by the 21 *J. c.* 18. the aboveſaid penalty is mitigated; which enacteth, that no perſon ſhall put any flocks, noiles, thrums, hair, or other deceivable thing, in any broad cloth; on pain of 5 *l.* (and no greater penalty) to the poor. *ſ.* 3.

And for the better diſcovery thereof, two juſtices, on information of any one of his knowledge or ſuſpicion of ſuch offence, may grant their warrant to call before them any perſon that ſhall in their diſcretions be thought fit to diſcover any ſuch offence, and examine them on oath; and if it be found, by two witneſſes, or confeſſion, they ſhall certify the ſame under their hands and ſeals to the churchwardens and overſeers; who ſhall upon ſuch certificate, and by warrant of ſuch juſtices, levy the penalty by diſtreſs: in default of diſtreſs, to be committed to gaol till paid. *ſ* 4, 5.

And the ſearchers ſhall ſet upon the ſame the word [*fault*]; and no perſon ſhall ſearch the ſame again, on pain of 5 *l.* to the party grieved, who ſhall ſue for the ſame by bill, plaint, or information, at the ſeſſions. 21 *J. c.* 18. *ſ.* 7.

3. No clothier ſhall uſe, or cauſe to be uſed, any ends of yarn, wefts, or other refuſe of cloths, druggets, or other woollen goods, or goods mixed with wool (flocks and pinions only ex-

cepted), by working the ſame up again into any ſort of goods; on pain of 5 *l.* on conviction before two juſtices on information on oath, in three months after the offence; to be levied by diſtreſs; half to the informer, and half to the poor: for want of diſtreſs, to be committed to gaol not exceeding three months, or until ſatisfaction be made. But perſons aggrieved may appeal to the next ſeſſions, giving ſix days notice in writing; who may order coſts and damages, and levy the ſame by diſtreſs, by their order or warrant; for want of diſtreſs, may commit the party to gaol, or to the houſe of correction not exceeding three kalendar months, or until ſatisfaction ſhall be made. And no *certiorari* ſhall lie on this act. 13 *G. c.* 23. *ſ.* 3, 4, 6.

And if any perſon ſhall be found collecting, buying, or carrying, in any bag or other convenience, any ſuch ends of yarn, wefts, thrums, ſhort yarn, or other refuſe of cloth, drugget, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted); the conſtable may, by warrant of one juſtice, ſearch ſuch perſon, bag, or convenience, and if any the ſame be found, he ſhall carry the offender before a juſtice of the peace, and on conviction before him, by confeſſion, or oath of one witneſs, he ſhall be deemed an incorrigible rogue, and liable to be puniſhed as ſuch. 13 *G. c.* 23. *ſ.* 8. 17 *G.* 2. *c.* 5. *ſ.* 4.

VI. Concerning the fulling of cloth.

Every fuller, in his craft and occupation of fulling, rowing, or tayſeling of cloth, ſhall uſe tayſels, and no cards, deceitfully impairing the ſaid cloth, on pain to yield to the party grieved his double damage: And every juſtice of the peace, mayor, maſter, warden, bailiff, portreve, conſtable of hundred, and ſteward of leet in their reſpective liberties, may hear and determine the ſame, and commit the offender to the next gaol till payment. And alſo any perſon not grieved may make information to any ſuch juſtice, mayor, maſter, warden, bailiff, portreve, or ſteward; in which caſe the offender ſhall forfeit to the king, or to ſuch perſon as ſhall be intitled to fines or amercements within their juriſdiction, 3*s.* 4*d.* and they may make proceſs againſt the party in like manner as juſtices of the peace may do for ſureties of the peace, without any fee to be taken for the execution of their offices in this behalf. 4 *Ed.* 4. *c.* 1. *ſ.* 6.

And no cloth, not fulled, ſhall be exported; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 7 *Ed.* 4. *c.* 3.

The laws for preventing the exportation of fuller's earth, have been treated of under the article concerning the exportation of wool.

VII. Concerning the ſearching of cloth, and therein of the length, breadth, and weight thereof.

Yard and inch. 1. For the meaſuring of cloth, the ſtatutes do generally provide, that the yard ſhall conſiſt of a ſtandard yard, and the breadth of a man's thumb beſides; or 37 inches in the whole.

2. In every parish and hamlet where cloaths are made, two justices (and in corporations, the mayor, together with one justice of the shire next adjoining) shall once a year, or oftner, call before them, by precept or otherwise, 2, 4, 6, 8, or more, of the most honest, discreet, and able men of such place, and appoint them overseers for a year, or six months, or shorter time; and shall take them sworn, and bound in recognizance of 40 *l.* each, to do their best endeavour by all lawful ways and means to see the statutes observed retating to the regulation of cloth. 3 & 4 *Ed.* 6. *c.* 2. *s.* 9. 39 *El. c.* 20. *s.* 4. 43 *El. c.* 10. *s.* 7. Overseers of cloth.

And any person, without reasonable excuse, refusing to be overseer, shall forfeit 5 *l.* half to the king, and half to such justices; and to remain in ward of the sheriff, till paid or secured. 39 *El. c.* 20. *s.* 5.

3. And the said overseers, or two of them, shall once a month at least, or so often as need shall require, go into the houses and rooms where the cloth shall be, and search, and try the same, by water, weight, or any other way. 39 *El. c.* 20. *s.* 4. Overseers to search.

And if any shall withhold cloth, or deny search; he shall, on conviction thereof at the sessions, forfeit for the first offence 10 *l.* for the second 20 *l.* for the third, being convicted by verdict and two witnesses, he shall stand upon the pillory in the next market town. 39 *El. c.* 20. *s.* 5.

Which said forfeitures shall be, one third to the overseers, one third to the king, and one third to the poor, as the sessions shall appoint. *id. s.* 9.

4. And by the 4 *J. c.* 2. (which is a judicious act, as are many in that king's reign) the several sorts of cloth shall be in length and breadth at the water, when thoroughly wet, and in weight when scoured, thicked, milled, and fully dried, as followeth: Length, breadth, and weight of cloth.

	Yards long	Quarters broad	Pounds weight
Long coloured broad cloth	30 to 34	6 ½	86
Long *Worcester*	30 to 33	7	78
Long plunkets, azures, blues, and long whites	29 to 32	6 ½	80
Sorting cloths with a blue selvedge	23 to 26	6	64
Fine short *Suffolks*	23 to 26	6 ½	64
Handiwarps	29 to 32	7	76
Broad plunkets, azures, blues, and other broad coloured	26 to 28	6 ½	68
Coloured short	23 to 25	6 ½	66
Half pieces of the same, called dozens, in proportion.			
Broad listed whites and reds	26 to 28	6 ½	64
Narrow listed whites	26 to 28	6 ½	61
Narrow listed reds	26 to 28	6 ½	60
Fine cloth with plain lists	29 to 32	6 ½	72
Cloths having stopt lists	30 to 33	7	78
Broads called *Tauntons*, *Bridgewaters*, and *Dunsters*	12 to 13	7	30
Narrow, ditto	24 to 25	4	30
Half cloth in proportion.			

	Yards long	Quarters broad	Pounds weight
Devonshire kerseys, called dozens—	12 to 13	—	13
Check kerseys, straights, and plain greys — —	17 to 18	4	24
Ordinary penistones, or forest whites	12 to 13	5 ½	28
Sorting penistones — —	13 to 14	6 ½	35
Kerseys called washers, or wash whites, half thicked —	17 to 18	—	17
The same quarter thicked —	18 to 19	—	17

Allowance in weight, for dying, dressing, rowing, and shearing, shall be made, in broad cloth four pounds, long cloth five pounds, and so in proportion. 4 *J. c.* 2. *s.* 13.

And no liquid shall be used for increase of weight, on pain of 40*s.* half to the king, and half to the buyer that shall sue. *id. s.* 12.

Maker's seal.

5. And the maker, before sale, shall set his seal of lead to the same, containing the length, and weight, to be tried by the water. 39 *El. c.* 20. *s.* 3.

Overseer's seal.

6. And the overseer shall fix a seal of lead to the cloth, containing the length and weight, with this word [searched]. 39 *El. c.* 20. *s.* 6.

And he shall, on the penalty of his recognizance, set his christian and surname upon his seal; and no seal otherwise shall be good. 21 *J. c.* 18. *s.* 11.

And cloth, sealed by the overseers, shall not be again tried but by the buyer. 4 *J. c.* 2. *s.* 22.

And if they shall find any *false* seal or mark, or the cloths to be stretched, they shall present the defaults at the next sessions. 39 *El. c.* 20. *s.* 5.

And if any person shall set any seal to cloth, or take any seal away without warrant; he shall, on conviction thereof at such sessions, for the first offence forfeit 10 *l.* for the second 20 *l.* and the pillory: The said forfeitures to be one third to the overseers, one third to the king, and one third to the poor, as the sessions shall appoint. 39 *El. c.* 20. *s.* 9.

Cloth sold unsealed.

7. And if any cloth be offered to be sold unsealed, the overseers shall seize it, and present the same to the justices at the next sessions. 39 *El. c.* 20. *s.* 4.

Cloths deficient in length, breadth, or weight.

8. And for every of the said cloths abovenamed, which shall be of less length than the seal doth import, shall be forfeited 6 *s.* 8 *d.* a yard, besides abatement of the price for what is wanting. 4 *J. c.* 2. *s.* 20.

For every yard of the said cloths sold, above the length, shall be forfeited 10 *s.* *id. s.* 17.

For the same wanting breadth throughout, shall be forfeited 20 *s.* wanting for half the length 10 *s.* under half 5 *s.* *id. s.* 19.

And for every pound wanting above two pounds in weight, shall be forfeited 10 *s.* *id. s.* 18.

Distribution of forfeitures.

9. And by the 21 *J. c.* 18. *s.* 12. All penalties and forfeitures whatsoever, for want of length, breadth, and weight, by this or any former act, shall be distributed into three equal parts; one third to the overseers and searchers finding and certifying the default,

fault, to be recovered by them in ſeſſions, by action of debt, bill, plaint, or information, and two thirds to the poor, by diſtreſs.

10. Meaſure and weight of cloths by former acts, not altered by the 4 *J. c.* 2. ſeem to be as follows:

Meaſure and weight of other cloths.

By the 3 *J. c.* 16. Ordinary kerſey ſhall not exceed 24 yards in length, and ſhall weigh one pound and three ounces a yard: Sorting kerſey ſhall not exceed 24 yards in length, and ſhall weigh one pound three ounces and a half a yard: On pain of 5 *s.* for every yard above, and 2 *s.* for every pound wanting (to be levied and diſtributed in like manner.)

By the 3 *J. c.* 17. No penalty ſhall be, for want of a ſeal on *Welſh* cottons; and they ſhall not be ſearched or tried but by the buyer.

By the 8 *El. c.* 12. Frizes and rugs ſhall be from 35 to 37 yards long, three quarters of a yard within a nail broad, and 44 pounds weight: (On pain of 20 *s.* for offending in length or breadth, by 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 25. And for every pound wanting, above four pounds, 5 *s.* by 4 & 5 *P.* & *M. c.* 5. *ſ.* 15.)

Moreover, by the 7 *J. c.* 16. Cogware, Kendals, coarſe cottons, and Carptmeals, made in *Cumberland*, *Weſtmorland*, or in *Carptmeale*, *Hawkeſhed*, and *Broughton* in *Lancaſhire*, whereof the dozen ſhall not exceed the price of 13 *s.* 4 *d.* ſhall not be ſearched nor ſealed, but may be made in ſuch ſort as may beſt pleaſe the buyer.

VIII. Concerning the dying of cloth.

1. For the encouragement of dreſſing and dying of cloth, no perſon ſhall export any white woollen broad cloth, until he have paid duty of 5 *s.* for every ſuch cloth; on pain of forfeiting the ſame, or the value thereof, half to the king, and half to him that ſhall ſeize, inform, or ſue. 6 *An. c.* 8.

2. No wool ſhall be boiled with gauls, bark of trees, or ſaw duſt, to be converted into broad cloth or kerſey; on pain of forfeiting the ſame, or the value thereof, half to the king, and half to him that ſhall ſue. 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 52.

3. No perſon ſhall dye any wool to be converted into cloth, called ruſſets, muſters, marbles, greys, roys, and ſuch like colours, or into hats or caps; unleſs it be perfectly woaded, boiled, and maddered: on pain of 40 *s.* for ſo much thereof as will ſerve for the making of every ſuch cloth; half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of peace. And if the overſeer will not ſue in half a year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5, 10, 11.

4. No perſon ſhall dye with braſel, to make a falſe colour in cloth or wool, hats, or caps; on pain of 20 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5.

5. No perſon ſhall dye any woollen cloths, as browns, blues, pewks, tawnies, or violets; except the ſame be perfectly boiled, greined, or maddered upon the woad, and ſhot with good cork or orchal; on pain of 20 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 4.

6. By the 13 *G. c.* 24. If any perſon ſhall dye any bays, or other woollen goods, for mather blacks, and not being dyed throughout with woad, indico, and mather only; he ſhall (being convicted thereof in 40 days) forfeit for every long *Bocking* bays containing 70 yards, 44 *s.* *Colcheſter* or ſhort bays of 35 yards 22 *s.* and ſo in proportion. If the penalty is above 5 *l.* it ſhall be recovered in the courts at *Weſtminſter*; if under 5 *l.* before two juſtices (not intereſted) by oath of one witneſs, half to the informer, and half to the company of dyers, if in *London*; if out of *London*, the whole to the informer and proſecutor. And if the penalties under 5 *l.* are not paid in 20 days after conviction, then to be levied by the conſtable by warrant of ſuch juſtices by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, to be kept to hard labour not exceeding three months. But perſons aggrieved by the juſtices may appeal to the next ſeſſions, who may allow coſts. And the ſaid mathered blacks ſhall be marked with a red roſe and a blue roſe; and if any perſon counterfeit the ſame, he ſhall forfeit 4 *l.* in like manner.

And if any perſon ſhall dye for *woaded* black any woollen goods, the ſame not being woaded, he ſhall forfeit in like manner for every cloth of 44 yards 40 *s.* bays of 70 yards 30 *s.* *Colcheſter* or ſhort bays of 35 yards 12 *s.* perpetuana or ſtuff 4 *s.* and ſo in proportion. And the ſaid woaded blacks ſhall be marked with a blue roſe only: And if any perſon ſhall counterfeit the ſame, he ſhall forfeit 4 *l.* in like manner.

And if any perſon ſhall uſe logwood in dying blue, he ſhall forfeit in like manner for cloth of 44 yards 40 *s.* *Bocking* bays of 70 yards 22 *s.* *Colcheſter* or ſhort bays of 35 yards 12 *s.* perpetuana or ſtuff of 24 yards 4 *s.* and for other woollen goods in proportion.

And the dyers within *London* ſhall be ſubject to the inſpection of the company; — out of the limits thereof, the quarter ſeſſions may appoint ſearchers; who may (with the conſtable's aſſiſtance) ſearch in the day time; and perſons refuſing ſuch ſearch ſhall forfeit 10 *l.* in like manner.

IX. Concerning tenters, and the ſtretching of cloth.

Tenter.

1. No perſon ſhall have or uſe any tenter, with a lower bar, pin, ring, or other engine or device; any wrinch, ring head, growm, rope, or other engine, to ſtretch any rough and unwrought woollen cloth: on pain of 20 *l.* half to the king, and half to him that ſhall ſue. 43 *El. c.* 10. *ſ.* 2.

Stretching.

2. No perſon ſhall ſtretch (or ſell the ſame ſtretched) any wrought woollen broad cloth above one yard in length, and half a quarter in breadth; or half cloth above half a yard in length, and half a quarter in breadth; or kerſey, cotton, dozen, peniſtone, frize, rugg, above half a yard in length, and one nail in breadth; on pain of forfeiting the ſame, half to the overſeer or informer, and half to the poor. 43 *El. c.* 10. *ſ.* 3, 12.

Stealing off tenters.

3. If any perſon ſhall feloniouſly cut and take, ſteal, or carry away, any cloth or other woollen manufacture from the rack or tenter in the night time, he ſhall be guilty of felony without benefit of clergy. 22 *G.* 2. *c.* 5. *ſ.* 3.

But

But becauſe it is often difficult to prove the owner's property in the cloth, therefore by the 15 *G.* 2. *c.* 27. it is enacted, that if any cloth or woollen goods on the tenters, or woollen yarn or wool left out to dry, ſhall be ſtolen in the night, any juſtice on complaint made in ten days by the owner, may iſſue his warrant to any peace officer, in the day time to enter into, and ſearch the houſes, outhouſes, yards, gardens, or other places belonging to the houſes of every perſon whom ſuch owner ſhall upon his oath declare to ſuch juſtice he ſuſpects to have ſtolen, taken away, or received the ſame; and if the officer ſhall find any ſuch goods which from the oath of ſuch perſon he ſhall have reaſon to ſuſpect to be ſtolen, he ſhall apprehend the perſon in whoſe cuſtody or poſſeſſion the ſame ſhall be found, and carry him before a juſtice; and if he ſhall not give a ſatisfactory account how he came by the ſame, or in a convenient time to be ſet by the juſtice produce the party of whom he had the ſame, or a credible witneſs to depoſe on oath his property therein, he ſhall be convicted of ſtealing ſuch goods; and ſhall for the firſt offence forfeit to the owner treble value, and in default of payment thereof in the time appointed by ſuch juſtice, he ſhall iſſue his warrant to levy the ſame by diſtreſs and ſale; and in default of diſtreſs, ſhall commit him to the common gaol where he ſhall be apprehended, for three months, or till paid; for the ſecond offence, treble value, and ſix months impriſonment; for the third offence, ſuch juſtice ſhall commit him to the aſſizes, and if he ſhall be there convicted in like manner, he ſhall be guilty of felony, and tranſported for ſeven years. But perſons aggrieved (except on the third conviction) may appeal to the next general quarter ſeſſions, whoſe order therein ſhall be final. But nevertheleſs, this ſhall not alter any former law in force, for ſtealing or receiving ſuch cloth, or goods, except where the proof is laid on the offender.

X. Concerning the dreſſing of cloth.

1. No woollen cloth ſhall be exported, till it be barbed, rowed, and ſhorn; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 3 *H.* 7. *c.* 11.

2. No perſon ſhall uſe iron cards, or pickards, in rowing of cloth; on pain of forfeiting the cards, and 20 *s.* half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of the peace. And if the overſeer will not ſue in half a year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 7, 10, 11.

3. No perſon ſhall put any flocks, chalk, flour, or ſtarch, or other deceivable thing on cloth; on pain of 40 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 6.

4. There ſhall be no rowing or raiſing of cloth, with oil, greaſe, or any liquid, but only on the edge of the ſhears with ſemet or oils; on pain of 13 *s.* 4 *d.* half to the king, and half to the buyer that ſhall ſue. 4 *J.* *c.* 2. *ſ.* 10.

5. There ſhall be no cutting of wool from the backſides of cloth, but with ſhears only; on like pain of 13 *s.* 4 *d.* 4 *J.* *c.* 2. *ſ.* 11.

6. No liquid ſhall be uſed on the ſide of cloth, to make it look better than the midſt; on like pain of 13 *s.* 4 *d.* 4 *J. c.* 2. *ſ.* 12.

7. The ſides ſhall not be raiſed, fulled, rowed, or ſhorn, better than the middle; on like pain of 13 *s.* 4 *d.* 4 *J. c.* 2. *ſ.* 10.

8. No perſon ſhall preſs cloth with a hot preſs; on pain of forfeiting the ſame, or the value, half to the king, and half to him that ſhall ſue. 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 52.

9. And preſſing of cloth with hot boards ſhall be puniſhed with like forfeiture, as preſſing it with a hot preſs. 21 *J. c.* 18. *ſ.* 11.

XI. Concerning mixed or medley broad cloth in particular.

Mixed or medley broad cloth.

It is provided by the 10 *An. c.* 16. and 1 *G. ſt.* 2. *c.* 15. that nothing therein ſhall extend to any cloth made in *Yorkſhire*; By which acts it is alſo further provided as follows:

Fulling miller to meaſure.

The fulling miller ſhall take an oath before a juſtice dwelling near ſuch mill, that he will well and truly perform the meaſuring all mixed or medley broad cloth fulled at his mill.

And ſeal.

In order to which, he ſhall have a table 12 foot long, and three foot broad, whereon the cloth ſhall be doubled and laid plain, with the length of a yard marked thereon; on which he ſhall meaſure the ſame, when fulled and wet; and ſhall fix and rivet at the head end thereof, a ſeal of lead (to be furniſhed by the clothier), which ſhall be marked with a crown on the rivet: on which ſeal he ſhall ſtamp his name, and the length and breadth of the cloth; for which he ſhall have one penny.

And enter the ſame.

He ſhall alſo enter in a book, the marks, ſort, number, length, and breadth thereof.

And if he ſhall refuſe to take ſuch oath, or to fix ſuch ſeal, or to make ſuch entry; he ſhall, on conviction in 40 days, before one juſtice not intereſted, on oath of witneſs, forfeit 20 *l.* to the poor of the pariſh or place, charges of conviction firſt deducted. If not paid in 30 days after conviction, to be levied by diſtreſs. For want of diſtreſs, to be committed to gaol or houſe of correction, to be kept to hard labour for three kalendar months. Perſons aggrieved may appeal to the next ſeſſions, who may allow coſts.

Counterfeiting the ſeal.

And if any perſon ſhall take off, deface, counterfeit, or alter, ſuch ſeal, or add any other; he ſhall, in like manner, forfeit 20 *l.*

Selling before ſealed.

And no perſon ſhall expoſe to ſale any mixed or medley broad cloth, before it be ſo ſealed; on pain of forfeiting one ſixth part of the cloth, to the poor, in like manner: or, if it is in *London*, to the benefit of *Chriſt*'s hoſpital.

Buyer may meaſure again.

If the buyer is not ſatisfied with the meaſure, he may have it meaſured again in the water, in eight days after delivery, giving two days notice to the ſeller or his factor: In which caſe, each party ſhall chuſe a meaſurer; and if thoſe two diſagree, they may chuſe a third: and if he ſhall refuſe, it ſhall be meaſured, if in *London*, by the keeper of *Blackwell-hall*, who ſhall be ſworn before a juſtice to meaſure it truly: if not in *London*, then if the two meaſurers diſagree, or appoint not a third perſon, the chief magiſtrate ſhall appoint and ſwear one.

But

But if the seller doth not then appear, or doth not then appoint a measurer, the keeper of *Blackwell hall* shall proceed to measure it.

And the measurer shall be paid by the buyer *6 d.* for each piece.

And he shall make a certificate of the true measure thereof.

And if on such his measuring there appear a less quantity in length, or in the greatest part of the breadth, than is mentioned in the seal, the owner or seller shall forfeit the sixth part of the value of such cloth; to be paid by the buyer, and deducted out of the price, on the measurer's making such certificate, and making oath thereof before a justice, of which the justice shall give him a certificate. The same to be repaid by the fulling miller.

And the said certificate shall in ten days be filed with the clerk of the peace, for which he shall have *1 s.* which certificate so filed, shall be a sufficient conviction. And an attested copy of such certificate (for which the clerk of the peace shall likewise have *1 s.*) shall be a sufficient authority to the owner or seller, to demand of the milman the forfeitures deducted out of the price. Which if he shall refuse to pay, it shall be leviad by distress, by warrant of one justice; and for want of distress, to be committed to gaol or house of correction for three months.

Tenters.

And by the *13 G. c. 23.* Every owner of tenters for mixed or medley broad cloth, in the counties of *Gloucester*, *Wilts*, and *Somerset*, shall measure the tenter, and mark in figures the length of yards, beginning at number I, and so continuing to the end, upon the top bar, and on the foreside thereof; on pain of *5 l.* on conviction before two justices, on information on oath, in 3 months after the offence; to be levied by distress, half to the informer, and half to the poor: for want of distress, to be committed to gaol not exceeding three months, or until satisfaction be made.

Inspectors.

And the justices of the said counties, at *Easter* sessions yearly, shall chuse inspectors; who, before they enter upon their office, shall take this oath; *I* A. B. *do swear, that I will well and truly execute the office of an inspector of mixed or medley woollen broad cloth within this county, according to the laws and statutes of this realm, and according to the best of my skill and knowledge: So help me god.*

And they shall inspect the mills, shops, houses, and tenter grounds of persons concerned in milling and manufacturing mixed or medley woollen broad cloth; and shall measure the cloth on the tenter; and such inspector shall stamp his name on a lead seal, to be furnished by the maker of the cloth, and affix the same on the head end of such cloth, and shall register in a book the clothier's, milman's, or other person's name, and the number, length, and breadth, of every such cloth; and shall at every quarter sessions give in a copy of such register, with an account of forfeitures levied.

The milman sending home such cloth before inspected, shall forfeit *40 s.* in like manner.

Persons refusing entrance to the inspector, shall forfeit *10 l.* in like manner.

And the inspector acting against his oath, shall forfeit *20 l.* in like manner.

And

And the ſaid juſtices ſhall allow a ſalary to each inſpector, not exceeding 30 *l.* a year: for the raiſing of which, every maker ſhall pay to the inſpector 2 *d.* for every ſuch cloth, before they are ſent from the mill; who ſhall pay the ſame, every 3 months or oftner, to the county treaſurer, to be applied by the ſeſſions towards ſuch ſalaries.

XII. Concerning the Yorkſhire *manufacture in particular.*

Yorkſhire manufacture.

1. We come next to conſider the *Yorkſhire* manufacture, the great ſupport of the inhabitants of the barren mountains in the North, in taking off large quantities of their coarſe wool. During the late war, this manufacture did draw alſo much wool out of *Scotland*, which in times of peace finds ſome other vent; perhaps into *France*; which it cannot ſo well do, during a *French* war. So that contrary to the maxims of commerce, the Northern counties flouriſh moſt in time of war; becauſe wool then may be ſold for near three times the price that it bears in time of peace, It were to be wiſhed, that ſome method might be found effectual. to preſerve unto us that valuable branch of the *Britiſh* commerce, and to prevent foreigners from foreſtalling us in that trade, of which we furniſh the neceſſary materials.

Penalties.

2. Divers acts of parliament have been obtained, at the expence of the clothiers, for the regulation and encouragement of this manufacture.

Theſe acts are in all ſix: five of which relate all to the ſame ſubject; each ſucceeding act explaining the former. And the other act ſtands alone by it ſelf.

The ſubſtance of the ſaid five acts, when brought together, ſeemeth to be as follows:

In the firſt place, as the puniſhments, and the methods of inflicting them, are not the ſame on the ſaid ſeveral acts, it is proper, in order to avoid frequent repetitions, to premiſe the ſeveral penalties on the ſeveral acts diſtinctly; that ſo, when the reader ſhall obſerve what act createth any of the following offences, he may by caſting his eye backward, ſee preſently the general method of proſecution upon that act. And, in the progreſs, where there is any particular puniſhment directed for any particular offence, it is thought proper to annex that puniſhment to that particular offence.

(1) 7 *An. c.* 13. The penalties on this act muſt be inflicted in 21 days after the offence is committed or diſcovered; on conviction before one juſtice (not being a dealer in the woollen manufacture) on the oath of one witneſs; if not paid in ſeven days, to be levied by the conſtable by warrant of diſtreſs from ſuch juſtice; and to be diſtributed, half to the informer, and half to the poor of the townſhip or place. For want of diſtreſs, to be committed to the houſe of correction or gaol, to be kept to hard labour not exceeding one month. But an appeal lies to the next ſeſſions, who may allow coſts. 7 *An. c.* 13. *ſ.* 5, 6, 8. 1 *G. ſt.* 2. *c.* 15. *ſ.* 16.

(2) 1 *G. ſt.* 2, *c.* 15. The ſame.

(3) 11 G.

(3) 11 *G. c.* 24. Information of all offences on this act shall be given on oath in 20 days after the offence is discovered; and the conviction to be before one justice (not being a dealer in the woollen manufacture) on the oath of one witness (notice of the charge being first given to the party); If not paid in ten days after notice given of the conviction, at the offender's last place of abode, and he do not appeal, the same to be levied by the constable by warrant of distress from such justice: To be distributed, half to the informer, and half to the poor. For want of distress, to be committed to the house of correction to be kept to hard labour for six months. But an appeal (on giving ten days notice to the informer) lies to the next sessions, who may allow costs. *s.* 18, 19.

(4) 7 *G.* 2. *c.* 25. All informations of offences on this act, shall be made in five days after discovery of the offence, and not otherwise. The conviction to be before one justice (not being a dealer in the woollen manufacture) on oath of one witness. If not paid in ten days after notice given of the conviction at the offender's last place of abode, and he do not appeal, the same to be levied by the constable, by warrant of distress from any such justice: To be distributed, half to the informer, and half to the treasurer towards the searchers salaries, and other expences of carrying these acts into execution. For want of distress, to be committed to the house of correction to hard labour not exceeding one month. But an appeal (on giving ten days notice to the informer) lies to the next sessions, who may allow costs. 7 *G.* 2. *c.* 25. *s.* 2, 13, 16. 14 *G.* 2. *c.* 35. *s.* 11.

(5) 14 *G.* 2. *c.* 35. The same.

3. The clothier shall, at the time of making the cloth, weave or sew into the head of it, in letters at length, his name and place of abode; on pain that if he shall offer the same to sale so unmarked, he shall forfeit 5 *l.* for each piece. 11 *G.* 2. *c.* 24. *s.* 8. Maker's mark.

And if any person shall counterfeit or alter such mark, before it is sold; the offender, and also the person in whose custody it is found, shall forfeit 5 *l.* *id.*

4. The fulling miller shall not full in one stock at one time, more than one whole broad cloth; on pain of 20 *s.* 7 *An.* *c.* 13. *s.* 4. Fulling.

5. And every person within 14 days after he is employed in the office of a fulling miller, shall make oath before a justice, that he will well and truly perform the measuring and stamping of the cloth fulled at his mill: which justice shall give him a certificate of such oath being taken. Which if he shall omit to do, he shall forfeit 5 *l.* 14 *G.* 2. *c.* 35. *s.* 5. 11 *G.* *c.* 24. *s.* 4. Fulling miller to measure and seal.

6. And moreover, the justices (not being dealers in woollen cloth) may at *Easter* sessions yearly, appoint other persons to be measurers or searchers at the said mills, who follow or have been brought up there in making or dressing woollen broad cloth; and may appoint them salaries, not exceeding 25 *l.* a year. And on such searcher's death, or incapacity, one such justice, dwelling near, may appoint another till *Easter* sessions, to be there confirmed, or another appointed. 14 *G.* 2. *c.* 35. *s.* 1, 2. Searchers to be appointed.

7. Which said measurer or searcher shall make the like oath before a justice, that he will well and truly perform the measuring Searcher's oath.

and

and ſtamping of the ſaid cloth: which juſtice ſhall give him a certificate of ſuch oath being taken. 14 *G.* 2. *c.* 35. *ſ.* 5.

Searcher to meaſure.

8. The ſaid meaſurer or ſearcher, ſo ſtationed at the fulling mill, ſhall together with the ſaid milman, meaſure all the whole cloths and ends there milled, ſuch as are ſtreamed or waſhed in the goit or mill ſtream, within ſix, and not ſooner than four hours after; ſuch as are not ſtreamed and waſhed, ſhall be meaſured in four hours after they come out of the ſtock. 14 *G.* 2. *c.* 35. *ſ.* 3.

Length and breadth.

9. And the length and breadth thereof ſhall be as follows: Every woollen broad cloth, whether it be an end or half cloth, or a long or whole cloth, being well ſcoured and fully milled, ſhall be five quarters and an half broad within the liſts, in the water, being fully wet; and the half cloth ſhall be not above 24 yards long, and the whole cloth not above 48 yards long. 11 *G.* *c.* 24. *ſ.* 1.

And if any whole or half cloth ſhall, when milled, and having ſo laid four hours, be under one yard and 13 ½ inches broad, for above one fifth part of the length thereof; the maker ſhall forfeit for the firſt inch 2*s.* 6*d.* for the ſecond 5*s.* and for every other inch 15*s.* half to the informer, and half to the treaſurer, charges of proſecution and conviction firſt deducted. 14 *G.* 2. *c.* 35. *ſ.* 8.

And whole thick kerſeys, whole thick plains, huggabags, or broken quilled kerſeys, ſhall be not under 18 yards long, and 3 ½ quarters broad, when wet: on pain that the perſon offering the ſame to ſale contrary hereto, ſhall forfeit for every inch wanting in breadth, and every half yard wanting in length 20*s.* 1 *G.* *ſt.* 2. *c.* 15. *ſ.* 15.

Sealing after it is meaſured.

10. And the milman ſhall affix a ſeal (to be furniſhed by the clothier) at one end; and the meaſurer another at the other end; and ſhall rivet the ſame; and ſhall each ſtamp his name, or part of it, on the ſeal or rivet, and the length and breadth in figures. 14 *G.* 2. *c.* 35. *ſ.* 6.

Penalty of taking away before meaſuring and ſealing.

11. And if the maker take away his cloth from the mill, before it be meaſured and ſtamped, he ſhall, on conviction on the oath of ſuch milman, or meaſurer, forfeit 20*s.* 14 *G.* 2. *c.* 35. *ſ.* 4.

Or if he offer the ſame to ſale unſealed, he ſhall forfeit 5 *l.* for each piece. 11 *G.* *c.* 24. *ſ.* 8.

Entry to be made after meaſuring and ſealing.

12. And immediately, the ſearcher ſhall enter in a book to be provided by the treaſurer, and kept at the mill, the maker's name and dwelling, the colour, ſort, length, and breadth. 14 *G.* 2. *c.* 35. *ſ.* 6.

Pay for meaſuring and ſealing.

13. For which meaſuring and ſealing, the owner ſhall pay to the milman 4 *d.* for every whole or long cloth, and 2 *d.* for every end or half cloth; three fourths to go to the treaſurer towards the ſearchers ſalaries and other uſes of the acts, and one fourth to the milman. 14 *G.* 2. *c.* 35. *ſ.* 6.

And when the expences of the acts ſhall be diſcharged, the juſtices in *Eaſter* ſeſſions may make order for increaſing or diminiſhing the duties for meaſuring and ſealing; ſo as they never exceed 4 *d.* for a whole, and 2 *d.* for a half cloth. *id.* *ſ.* 19.

Penalty on the fulling miller.

14. Generally, the fulling miller omitting his duty, ſhall forfeit 5 *l.* 11 *G.* 2. *c.* 24 *ſ.* 5.

On counterfeiting the ſeal.

15. And if any perſon ſhall counterfeit or alter the ſeal, he ſhall forfeit 5 *l.* 11 *G.* *c.* 24. *ſ.* 4.

16. If

16. If the owner ſhall, in four hours after the cloth is brought home, find on meaſuring the ſame, that it is of leſs length, or of leſs breadth, for above one fifth part of the length, than is expreſſed by the ſtamp, and ſhall, before it is offered to ſale, make oath thereof before ſuch juſtice; then the milman and ſearcher, being convicted by ſuch oath, ſhall jointly forfeit for the firſt inch in breadth or half yard in length falling ſhort of the ſtamp 5 *s.* and for every other inch in breadth and half yard in length 10 *s.* half to the informer, and half to the treaſurer (charges of proſecution firſt deducted). And the treaſurer may deduct the meaſurer's penalty out of his ſalary. 14 *G.* 2. *c.* 35. *ſ.* 11, 12. On wrong meaſuring.

17. And the juſtices (not dealing in cloth) ſhall at *Eaſter* ſeſſions yearly, appoint other ſearchers, who follow or have been brought up there in the trade of making or dreſſing woollen broad cloth; and allow each a ſalary not exceeding 15 *l.* a year; who ſhall make oath, that they will well and truly execute the office of ſearchers of broad woollen cloth, according to the laws of the realm, and to the beſt of their knowledge. 11 *G.* *c.* 24. *ſ.* 12. 7 *G.* 2. *c.* 25. *ſ.* 14. Other ſearchers to be choſen.

18. And they may ſearch (more eſpecially when required under the hand of any ſuch juſtice), and meaſure ſuſpected cloth; and perſons hindring, ſhall forfeit 10 *l.* 11 *G.* *c.* 24. *ſ.* 13. Who ſhall ſearch and meaſure.

But they ſhall not ſearch cloth packed for exportation, provided the merchant or packer ſhall ſwear before a juſtice, that it was, when demanded to be produced, dreſſed or packed up to be ſent away. 14 *G.* 2. *c.* 35. *ſ.* 15.

And if ſuch ſearcher act againſt his oath, he ſhall forfeit 20 *l.* 11 *G.* *c.* 24. *ſ.* 14.

19. And if any buyer ſhall ſuſpect the cloth to want length or breadth, he may in 14 days after delivery, put it in water four hours, and cauſe it to be meaſured by a ſworn ſearcher; and if found leſs in length or breadth than is marked on the ſeals, the ſeller ſhall forfeit 20 *s.* 7 *G.* 2. *c.* 25. *ſ.* 2. Buyer may meaſure again.

But it is provided afterwards in the ſame act, that no more than 10 *s.* ſhall be forfeited for the firſt inch wanting in breadth, and 15 *s.* for the ſecond, and 20 *s.* for every other inch. *ſ.* 4.

And that white broads ſhall not forfeit for want of breadth, after put in hot water or other liquors to be dyed. *ſ.* 5.

20. And the offender may, in five days after notice of the offence, view the cloth; and if the buyer refuſe, the proſecution ſhall ceaſe. 7 *G.* 2. *c.* 25. *ſ.* 3. Seller may view it.

21. And by a former act it is provided, that the ſeller's penalty ſhall be repaid by the milman; and on refuſal, to be levied by diſtreſs; and that the buyer may in three days return it to the ſeller, who ſhall pay back the price and charges (to be aſcertained on oath before a juſtice); and on refuſal, to be diſtrained of. 11 *G.* *c.* 24. *ſ.* 5, 7. Milman to anſwer over for wrong meaſure.

22. Cloths damaged and ſhortned by accident, ſhall by a ſearcher be meaſured and ſealed again. 14 *G.* 2. *c.* 35. *ſ.* 10. Cloths damaged to be meaſured again.

23. The owners of tenters ſhall mark, on the foreſide of the top bar, in figures, the length of yards on each tenter; beginning with number 1, and ſo on; on pain of 5 *l.* 11 *G.* *c.* 24. *ſ.* 11. Tenters.

24. And

Stretching. 24. And if any perſon ſhall ſtretch any ſuch cloth more than one yard in 20 in length, or more than one inch in a quarter of a yard in breadth, and ſo in proportion, beyond the Meaſure on the ſeal; he ſhall forfeit 20 *s.* for every half yard in length, and inch in breadth. 7 *G.* 2. *c.* 25. *ſ.* 12.

Cards in dreſſing. 25. Cards with wire or other metal ſhall not be uſed in dreſſing cloth, on pain of 50 *l.* 11 *G.* *c.* 24. *ſ.* 18.

Stretching in dreſſing. 26. And the cloth dreſſer ſtretching the merchant's cloth, or altering the ſeals, ſhall repay to him the penalties. 11 *G.* *c.* 24. *ſ.* 16.

Dreſſer's ſtamp. 27. And he ſhall dreſs the ſame in all parts alike; and ſhall at the head end affix and rivet a ſeal of lead, and ſtamp thereon his name at length; on pain of 5 *l.* 11 *G.* *c.* 24. *ſ.* 10.

What hath been ſaid may ſuffice for a general view of ſo perplexed a matter, as muſt be neceſſarily ſuppoſed in five pretty long acts of parliament, all unrepealed, and every ſubſequent act explaining and altering the former: A more exact knowledge of any particular, muſt be laboured for in the acts themſelves.

The act which ſtands alone, is concerning narrow woollen cloths only, not being white kerſeys, nor half thicks; and is as follows:

Narrows. 28. The juſtices in *Eaſter* ſeſſions yearly ſhall appoint ſearchers, ſuch as have ſerved apprenticeſhips to the trade of making narrow cloth, or have exerciſed ſuch trade three years; and appoint them ſalaries: Who ſhall be ſworn before a juſtice, well and truly to execute the office of ſearching ſuch narrow woollen cloth. And in caſe of the death or ſickneſs or other diſablility of a ſearcher; one juſtice, living near, may appoint another till the next ſeſſions, to be there confirmed, or another appointed. 11 *G.* 2. *c.* 28. *ſ.* 3, 4.

Which ſaid cloth may be made of what length and breadth the maker ſhall think fit. *ſ.* 13.

And he ſhall weave or ſet in the head of every piece, the firſt letters of his name; on pain, on conviction in one month, of forfeiting 20 *s.* *ſ.* 1.

And the ſame ſhall be meaſured when wet at the mill, both by the milman and the ſearcher, who ſhall meaſure it down the middle for the length, and within the liſts for the breadth. *ſ.* 1.

And the milman ſhall rivet at one end a ſeal of lead, to be furniſhed by the clothier, and ſhall ſtamp his name thereon at length, and the length and breadth in figures: And the ſearcher ſhall alſo affix a ſeal of lead at the other end, with his name, with the length and breadth in like manner. *ſ.* 1.

And they both ſhall keep books, wherein they ſhall enter the day and year when milled, the name and place of abode of the owner, and the length and breadth; and ſhall ſuffer the buyer to inſpect the ſame. *ſ.* 1.

The miller, or ſearcher offending herein, ſhall, on conviction in eight days after the cloth is removed from the mill, forfeit 5 *l.* *ſ.* 1, 2.

And if any perſon ſhall counterfeit the ſeal or mark, he ſhall (on conviction in one month) forfeit 40 *s.* *ſ.* 7.

And a ſum not exceeding 3 *d.* for each cloth, ſhall be paid by the owner before it is carried from the mill, to ſuch perſon as the juſtices

juſtices at *Eaſter* ſeſſions ſhall appoint, to pay the ſearchers ſalaries, and other expences of the act: And the perſon ſo appointed may detain the cloth at the mill till paid; and if not paid in eight days after demand, ſuch perſon may ſell the ſame, and detain the money, rendring the overplus on demand. *ſ.* 8, 9.

And the owner ſhall meaſure the cloth when brought from the mill, before it is ſet on the tenter; and if it is leſs than the ſtamp, or by lying wet is become leſs, he ſhall carry it to the mill-man and ſearcher to be reſtamped, on pain of 5 *s.* on conviction in one month after the offence. *ſ.* 5.

The owner may ſtretch the ſame one inch in a yard in length, and two inches in every three quarters in breadth, and ſo in proportion: but if any perſon ſtretch it further, he ſhall forfeit for the firſt half yard in length, or firſt inch in breadth overſtretched 10 *s.* and for every other half yard in length, or half inch in breadth 20 *s.* *ſ.* 6.

The conviction to be before one juſtice, not being a dealer in cloth, on oath of one witneſs, reaſonable notice being firſt given to the perſon accuſed. *ſ.* 10.

The forfeitures (if not paid in ten days after notice of the conviction given at the offender's laſt place of abode, and if he ſhall not appeal) to be levied by the conſtable by warrant of a juſtice by diſtreſs, rendring the overplus on demand, charges of diſtreſs and ſale being firſt deducted: To be diſtributed (after deducting the charges of conviction) half to the informer, and half to the treaſurer for the expences of carrying the act into execution: For want of diſtreſs, to be committed to the houſe of correction to hard labour for one month. *ſ.* 10.

Perſons aggrieved may appeal to the next quarter ſeſſions to be held after 14 days from the conviction, giving ten days notice to the informer. And the juſtices there, may award coſts. *ſ.* 12.

XIII. Concerning burying of the dead in woollen cloth.

1. By the 30 *C.* 2. *c.* 3. (which is required to be given in charge at the aſſizes and ſeſſions) no corps of any perſon (except thoſe who ſhall die of the plague) ſhall be buried in any ſhirt, ſhift, ſheet, or ſhroud, or any thing whatſoever made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or in any ſtuff or thing, other than what is made of ſheep's wool only, or be put into any coffin lined or faced with any ſort of cloth or ſtuff, or any other thing whatſoever, that is made of any material, but ſheep's wool only. *ſ.* 3, 9. 10.

2. And the miniſters ſhall take an exact account, and keep a regiſter book, to be provided at the charge of the pariſh, and make a true entry therein of all perſons buried in their reſpective pariſhes or precincts, or in ſuch common burial places as their reſpective pariſhioners are uſually buried. *ſ.* 4, 7.

3. Within eight days after the interment, ſome relation of the party deceaſed, or other credible perſon, ſhall cauſe an affidavit (A) in writing to be made under the hands and ſeals of two or more credible witneſſes, ſetting forth that ſuch deceaſed perſon

was

was not put in, wrapt, or wound up, or buried, in any ſhirt, ſhift, ſheet, or ſhroud, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or other than what is made of ſheep's wool only, or in any coffin lined or faced with any cloth, ſtuff, or any other thing whatſoever, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or any other material but ſheep's wool only: And ſhall bring the ſame, and make oath thereof, before the mayor, or a juſtice of the peace, or maſter of chancery [and if no juſtice ſhall reſide or be to be found in the pariſh where the party is interred, then to any parſon, vicar, or curate, in any other pariſh within the county, 32 *C.* 2. *c.* 1.] who ſhall adminiſter the oath, and atteſt the ſame under their hands upon ſuch affidavit, *gratis*. *ſ.* 4, 5.

4. And ſhall (within eight days as aforeſaid) bring the ſame ſo ſigned and atteſted, to the miniſter; who ſhall enter the ſame in the regiſter. *ſ.* 4, 7.

5. And if no relation of the party buried, or other perſon, ſhall bring ſuch affidavit, as aforeſaid, Then the goods and chattels of the party deceaſed ſhall be liable to the forfeiture of 5 *l.* to be levied by diſtreſs, by warrant of the chief magiſtrate in any town corporate, or of any juſtice of the peace: Or in default thereof, by like diſtreſs of the goods of the perſon in whoſe houſe the party died; or of any that had a hand in putting ſuch perſon into any ſhirt, ſhift, ſheet, ſhroud, or coffin, or did order or diſpoſe the doing thereof; and in caſe ſuch perſon were a ſervant and died in the family of his or her maſter or miſtreſs, the ſame ſhall be levied on the goods of ſuch maſter or miſtreſs; and if ſuch perſon died in the family of his or her father or mother, then the ſame ſhall be levied on the goods of his or her father or mother: Which ſaid forfeiture ſhall be levied, paid, and allowed out of the eſtate of the ſaid deceaſed perſon, before any ſtatute, judgment, debt, legacy, or other duty whatſoever. *ſ.* 4.

6. And in ſuch caſe, where no affidavit ſhall be brought in eight days as aforeſaid, to the miniſter where the party was buried, he ſhall forthwith give, or cauſe notice (B) thereof to be given in writing under his hand, to the churchwardens or overſeers; on pain of 5 *l.* with full coſts (provided the ſuit be commenced in ſix months), one fourth to the king, two fourths to the poor where ſuch perſon offending dwells, and one fourth to him that ſhall inform and ſue. *ſ.* 5, 6.

And moreover, where no ſuch affidavit ſhall be brought to him within ſuch time, he ſhall enter a memorial thereof in the ſaid regiſtry, againſt the name of the party interred, and of the time when he certified the ſame to the churchwardens or overſeers. *ſ.* 7.

7. The ſaid churchwardens or overſeers ſhall within eight days after ſuch notice (on like pain as the miniſter) repair to the chief magiſtrate, if ſuch party was buried in a town corporate, or elſe to a juſtice of the peace: Which ſaid juſtice or magiſtrate, on certificate from ſuch miniſter, ſhall (on the like pain) forthwith grant a warrant (C) for the levying of the ſaid forfeiture on the goods of the parties before mentioned, rendring the over-

plus

plus all reasonable charges being first deducted; half of which shall be to the poor, and half to the informer. *s.* 5.

8. And when the overseers shall account, they shall give an account of the name and quality of every person interred within their parish from the time of their former account, and of such certificate as came to their hands from such minister, and of their levying the penalties, and of their disposal thereof; on pain of 5 *l.* to be levied by distress, by warrant of the justices, or two of them, to whom they shall account. And no overseers account shall be allowed, until they shall have therein accounted for the burials as aforesaid. *s.* 8.

XIV. Against importation of woollen cloth.

No foreign woollen cloth shall be imported, on pain of forfeiture, and further punishment at the king's will. 11 *Ed.* 3. *c.* 3. 4 *Ed.* 4. *c.* 1. *s.* 7.

XV. Encouragement of the exportation of woollen manufactures.

Woollen manufactures shall be exported custom free. 11 & 12 *W.* *c.* 20.

A. Affidavit for burying in woollen.

Westmorland. *Be it remembered, that on the ——— day of ——— A. W. of ——— yeoman, and* B. W. *of ——— yeoman, being two credible persons, do make oath, That* A. D. *late of ——— in the parish of ——— in the county aforesaid, on the ——— day of this present month of ——— was not put in, wrapt or wound up, or buried in any shirt, shift, sheet, or shroud, made or mingled with flax, hemp, silk, hair, gold, or silver, or other than what is made of sheep's wool only, or in any coffin lined or faced with any cloth, stuff, or any other thing whatsoever made or mingled with flax, hemp, silk, hair, gold, or silver, or any other material but sheeps wool only.*

A. W.
B. W.

Sworn before me, being one of his majesty's justices of the peace for the said county [or, *vicar of ——— in the said county, there being no justice of the peace residing (or to be found) in the said parish of ———*] *the day and year abovesaid;*

J. P.

B. The minister's notice of affidavit of burying in woollen not being brought.

Westmorland. { To the churchwardens and overseers of the poor of the parish of ——— in the said county.

I A. M. *minister of the parish of* ——— *aforesaid, in the county aforesaid, do hereby give you notice, that on the* ——— *day of* ——— *the body of* A. D. *was buried within the said parish, and that no person whatsoever hath brought to me any affidavit pursuant to the statute made for burying in woollen. Witness my hand the* ——— *day of* ———.

C. Warrant to levy the penalty for not burying in woollen.

Westmorland. { To the constable of ———.

WHEREAS *it duly appears to me* ——— *one of his majesty's justices of the peace for the said county, that* A. D. *late of* ——— *deceased, on the* ——— *day of* ——— *was buried within the parish of* ——— *in the county aforesaid, and that no affidavit hath been brought within eight days afterwards to the minister of the said parish that the said* A. D. *was buried in no other materials but sheep's wool only, pursuant to the statute in that case made*; [*and whereas it also duly appeareth unto me, that he the said* A. D. *had no goods and chattels at the time of his death as aforesaid, and that he the said* A. D. *did die in the house of* A. O. *of* ——— *yeoman, at* ——— *aforesaid, in the county aforesaid*; Or, *that* A. O. *of* ——— *yeoman, had a hand in, or did order and dispose, the putting the said* A. D. *deceased in a shirt, shift, sheet, shroud, or coffin, contrary to the form of the statute aforesaid*; or, *that* A. M. *of* ——— *yeoman, at the time of the death of him the said* A. D. *was master of him the said* A. D. *and that he the said* A. D. *servant to the said* A. M. *did die in the house of him the said* A. M *at* ——— *aforesaid*; or, *that* A. F. *of* ——— *yeoman, was father to the said* A. D. *and that he the said* A. D. *did die in the family of him the said* A. F.] *These are therefore to command you forthwith to levy the sum of* 5 l. *by distress and sale of the goods and chattels which he the said* A. D. *had at the time of his death* [Or, *of the goods and chattels of him the said* A. O.] *rendring the overplus to* ——— *your reasonable charges being first deducted: One moiety of which said sum of* 5 l. *you shall pay to the overseers for the use of the poor of the said parish where he the said* A. D. *was buried, and the other moiety to* A. I. *of* ——— *yeoman, who informed me of the said offence, and did sue for the said forfeiture. Herein fail you not. Given under my hand and seal at* ——— *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Wreck.

1. WRECK of the sea, in legal understanding, is applied to such goods, as after shipwreck at sea, are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admiral, but to the common law. 2 *Inst.* 167. Wreck, what.

2. None of those goods which are called *jetsam* (from being *cast* into the sea while the ship is in danger, and after perisheth) or those called *flotsam* (from *floating* upon the sea after shipwreck) or those called *lagan* or *ligan* (goods thrown overboard before the shipwreck, which sink to the bottom of the sea) are to be esteemed wreck, so long as they remain upon the sea, and are not cast upon the land by the sea; but if any of them are cast upon the land by the sea, they are wreck. *Wood* 367. Jetsam, flotsam, & lagan.

3. Also, by the 3 *Ed.* 1. *c.* 4. *Where a man, a dog, or cat escape quick out of the ship, the ship or any thing therein shall not be adjudged wreck of the sea.* Living creature escaping.

A man, a dog, or a cat] Which statute being but declaratory of the common law, these three instances are only put for examples; for besides these two kinds of beasts, all other beasts, fowls, and other living things are understood, whereby the property of the goods may be known. 2 *Inst.* 167, 168.

Escape quick out of the ship] If a ship be ready to perish, and all the men therein (for the safeguard of their lives) leave the ship, and after, the forsaken ship perisheth; if any of the men be saved and come to land, the goods are not lost. 2 *Inst.* 167.

4. By the 17 *Ed.* 2. *The king shall have wreck of the sea throughout the realm.* To whom the wreck belongeth.

And the cause wherefore originally wreck was given to the crown, stood upon two main maxims of the common law. 1. That the property of all goods whatsoever must be in some person. 2. That such goods as no subject can claim any property in, do belong to the king by his prerogative. 2 *Inst.* 167.

5. The taking of goods whereof no one had a property at the time, is not felony; and therefore he who takes away a wreck, before it is seized by the person who has a right thereto, is not guilty of felony, and shall only be punished by fine, or the like. 1 *Haw.* 93, 94. That is to say, he is not guilty of felony by the common law; but it is otherwise by the statutes here following. Seizing wreck not felony.

6. To preserve ships stranded, or in distress, from being plundred by the country people, it is enacted by the 12 *An. st.* 2. *c.* 18. and the 26 *G.* 2. *c.* 19. as follows: (Which said act of the 12 *An.* is required to be read in the church four times a year, in all sea port towns, and on the coast.) Assisting ships in distress.

The justice of the peace, mayor, bailiff, collector of the customs, or chief constable, who shall be nearest to where any ship shall be stranded or cast away, shall forthwith give publick notice

for a meeting to be held as ſoon as poſſible, of the ſheriff or his deputy, the juſtices of the peace, mayors, coroners, and commiſſioners of the land tax, or any five of them, who ſhall employ proper perſons for ſaving the ſame; and ſhall command the conſtables neareſt to the ſea coaſts, to call together as many men as ſhall be thought neceſſary, to aſſiſt. And alſo the officers of exciſe ſhall be proper officers to put theſe acts in execution. And within the cinque ports, the lord warden of the cinque ports, the lieutenant of *Dover caſtle*, the deputy warden of the cinque ports, the judge official, and commiſſary of the court of admiralty of the cinque ports, ſhall put the ſame in execution there.

And any juſtice of the peace, in the abſence of the high ſheriff, may take ſufficient power of the county.

And they may command all ſhips at anchor near, to aſſiſt; and if the officer of ſuch ſhip ſhall refuſe or neglect, he ſhall forfeit 100 *l.* with coſts, to the officer of the ſhip in diſtreſs.

And to prevent confuſion, and contradictory orders, the perſons aſſembled to ſave any veſſel or goods as aforeſaid, ſhall conform in the firſt place to the orders of the maſter or other officer or owner, or perſons employed by them; and for want of their preſence or directions, then to the orders of the officers of the cuſtoms, next to thoſe of the officers of exciſe, then of the ſheriff or his deputy, then of a juſtice of the peace, then of a mayor, then of the coroner, then of a commiſſioner of the land tax, then of a chief conſtable, then of a petty conſtable; and any perſon acting contrary to ſuch orders, ſhall forfeit not exceeding 5 *l.* to be levied by warrant of one juſtice, and in caſe of non-payment, to be committed to the houſe of correction, not exceeding three months.

And every ſuch ſheriff, juſtice, mayor, coroner, lord of a manor, under ſheriff, or commiſſioner of the land tax, ſhall have 4 *s.* a day during his attendance, out of the goods ſaved.

And if any Perſon, not impowered as above, ſhall endeavour to enter on board ſuch veſſel, or ſhall deface the marks of the goods; he ſhall within 20 days make double ſatisfaction to the party grieved, at the diſcretion of the two next juſtices; or in default thereof, ſhall be ſent by them to the next houſe of correction, to be kept to hard labour for 12 months.

And if any perſons not employed by the maſter or owner, ſhall in the abſence of perſons employed by them, ſave any veſſel or goods, and cauſe them to be carried for the benefit of the owners into port, or any near adjoining cuſtom houſe, or place of ſafe cuſtody, immediately giving notice thereof to a juſtice, magiſtrate, cuſtom houſe or exciſe officer; they ſhall be intitled to a reaſonable reward for the ſame, to be adjuſted by three neighbouring juſtices, which may be recovered by action at law: Or the ſame may be adjuſted by the officers abovementioned. And if the ſaid ſalvage (and the charges of 4 *s.* a day as abovementioned) ſhall not be paid in 40 days after the ſervices performed, the officer of the cuſtoms concerned in the ſalvage, may borrow or raiſe ſo much money as ſhall pay the ſame, upon a bill or bills of ſale, under his hand and ſeal, of the veſſel, or cargo,

cargo, or part thereof; redeemable nevertheless on payment of the principal, and interest at 4 *per cent*.

And more generally, by another clause it is enacted, that all persons who shall act or be employed in preserving any such vessel or cargo, shall be paid a reasonable salvage, to be adjusted by three neighbouring justices as abovementioned.

And if any person shall be assaulted, beaten, and wounded, in the exercise of his duty in the salvage of any vessel or goods, the offender, on conviction by indictment at the assizes or sessions, shall be transported for seven years. And such persons molesting the preservation of the ship may be repelled by force.

And if any person shall plunder, steal, take away, or destroy any goods belonging to such ship in distress, or which shall be wrecked or stranded (whether any living creature be on board or not) or any tackle, provision, or part of such ship; or shall beat or wound, with intent to kill, or otherwise wilfully obstruct the escape of any person endeavouring to save his life from such ship, or the wreck thereof; or shall put out any false light, with intent to bring any vessel into danger; he shall be guilty of felony without benefit of clergy. Provided that when goods of small value shall be stranded or cast on shore, and stolen without circumstances of cruelty, outrage, or violence; the offenders may be prosecuted for petit larceny only.

And if any person shall make any hole in any such ship in distress, or steal any pump belonging thereto, or wilfully do any thing tending to the immediate loss of such ship, he shall be guilty of felony without benefit of clergy.

And if oath be made before a magistrate, of any such plunder or theft, or of the breaking of any such ship, and the examination in writing thereupon taken be delivered to the clerk of the peace, he shall cause the offender to be forthwith prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining, in which adjoining county any indictment may be laid by any other prosecutor; and if the fact be committed in *Wales*, then the prosecution shall or may be carried on in the next adjoining *English* county; and the necessary charges of such prosecution shall be paid by the treasurer of the county where the fact shall be committed, as the justices in sessions shall order: and if the clerk of the peace shall neglect his duty herein, he shall forfeit 100 *l.* to him who shall sue.

And one justice, upon information on oath, of any part of the cargo or effects of any vessel lost or stranded near the coasts, being unlawfully conveyed, or concealed, or of some reasonable cause of suspicion thereof, may issue his warrant for searching as in other cases of stolen goods: And if the same be found in any house or other place, or in the possession of any person not legally authorised to have the same; and the owner or occupier, or person in whose possession the same shall be found, shall not immediately upon demand deliver the same; such justice, on proof of such refusal, shall commit him to the common gaol for six months or till he shall have paid treble value thereof.

And

And if any perſon ſhall offer to ſale any ſuch goods unlawfully taken away, or reaſonably ſuſpected ſo to have been, the perſon to whom they are offered, or any officer of the cuſtoms or exciſe, or conſtable, may ſeize the ſame; and ſhall, with all convenient ſpeed, carry the ſame, or give notice thereof, to one juſtice; and if ſuch perſon ſhall not in ten days make out his property therein, to the ſatisfaction of the juſtice, they ſhall be delivered over to the rightful owner, on payment of a reaſonable reward (to be aſcertained by the juſtice) to the ſeizor; and the juſtice may commit ſuch offender to the common gaol for ſix months, or till he ſhall have paid treble value. And if any perſon ſhall diſcover to any juſtice, magiſtrate, cuſtom houſe or exciſe officer, where any ſuch goods are wrongfully bought, ſold, or concealed, he ſhall be intitled to a reaſonable reward, to be adjuſted as the ſalvage.

And the officer of the cuſtoms who ſhall act in preſerving any veſſel or cargo, ſhall, as ſoon as conveniently may be, cauſe or procure all perſons belonging to the veſſel, and others who can give an account thereof, to be examined on oath before a juſtice, as to the name or deſcription of the veſſel, the names of the maſter and owners, and of the places from or to which the veſſel was bound, and the occaſion of the diſtreſs; which examination the juſtice ſhall take in writing, and ſhall deliver a copy thereof to the ſaid officer of the cuſtoms, who ſhall forthwith tranſmit the ſame to the ſecretary of the admiralty, who ſhall publiſh the ſame in the next *London* gazette, or ſo much thereof as ſhall be neceſſary for the information of the perſons intereſted or concerned therein.

And if no perſon ſhall appear to claim the goods ſaved, the officer of the cuſtoms ſhall apply to three of the neareſt juſtices, who ſhall put him or ſome other reſponſible perſon in poſſeſſion, taking an account in writing of the goods, to be ſigned by the ſaid officer; and if they be not claimed in a year, they ſhall be ſold (and if periſhable, ſhall be forthwith ſold) and the money returned to the exchequer, till claimed by the owner.

But this ſhall not prejudice the right of any lords of manors, or others, lawfully claiming wreck, or goods *flotſam*, *jetſam*, or *lagan*.

CONCLUSION.

HAVING thus finiſhed the work propoſed; it may be requiſite, upon the whole, to ſubjoin one ſingle reflection, which will occur to every reader, in peruſing almoſt every one of the larger titles of this book; and that is, concerning the poſſibility and expediency of reforming the ſtatute law. The ſtatutes at large, from the very nature of the thing, have in proceſs of time become very cumberſome, and very intricate. They are

not to be purchased but for a larger sum of money, nor to be understood without a greater expence of time, than a wise man would often chuse to employ in that way.

The course to be taken in that matter seems to be this:

First, actually to repeal all those statutes, and parts of statutes, which are *virtually repealed* by subsequent contradictory statutes.

Secondly, to repeal all those statutes which are *obsolete*, and grown out of use, by the alteration of times and circumstances.

Thirdly, to repeal all those statutes, which being neither contradicted by subsequent statutes, nor become obsolete, yet are rendred *useless* by subsequent statutes enacting the same things over again, with alterations and amendments.

Fourthly, to repeal, or alter, all those statutes which are *frivolous*; that is, which possibly cannot, or probably never will be executed: such as those which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no such officer; or which prohibit an offence under a very small penalty to be recovered in the courts at *Westminster*, where the reward will not countervail the expence of recovering it.

Fifthly, to omit all those statutes, which although enacted to be publick statutes, yet are only *of private concern*; such as those for bridges in particular places, or paving the streets in such a market town; and the like.

Sixthly, as to the rest, to lay all the statutes, and clauses of statutes together, which relate to the same subject, and out of the whole to compose one, two, or more uniform and consistent statutes; and then to repeal all those other, as workmen destroy the scaffolding when they have erected the building.

I know but of one material objection, against this method of proceeding; and that is, that the law being now for the most part well settled upon the statutes, notwithstanding their acknowledged disorder and confusion, this would tend to unsettle all again, by breaking the connexion which there is between one statute and another, and one part of a statute and another, altering the words and phrases, and after all perhaps not much mending the matter; since it is possible that the new statutes may be as liable to objections as the former were.

But this is an argument, not so much against the thing it self, as against the manner in which it may be executed. As to breaking the connexion, it is certain that for the most part there is no connexion; and where there is, that may easily be preserved: And it ought to be laid down as an invariable rule, to retain as much as possible the identical words and sentences of the former statutes; only rejecting what is superfluous, inserting the clear law as it now stands, and putting the same into a form more regular, concise, and easy. And this seemeth no way impossible to be done, by any person of a tolerable understanding, endowed only with a clear head, and much patience.

THE END.

ERRATA.

The reader is desired with his pen to correct the following *errata*, most of which do affect the sense; other smaller mistakes are left to the reader's candour.

VOL. I.

Page 21. line 43. for *ch.* 31. read ch. 13.
P. 37. l. 32. for *in parish*, r. in the parish.
P. 45. l. 2. for *year are*, r. year, they are.
P. 62. l. 18. for *parishoners*, r. parishioners.
P. 90. l. 39. for *made*, r. named.
P. 94. l. 12. for *of man*, r. of a man.
P. 103. l. 17. for *yeoman*, r. yeomen.
P. 106. l. 9. for *without*, r. within.
P. 191. l. 44. for *precedent*, r. a precedent.
P. 193. l. 24. for *pull of*, r. pull off.
P. 232. l. 17. for *goods*, r. good.
P. 292. l. 29. for *rates*, r. rights.
P. 330. l. 15. for 2 G. 2. r. 1 G. 2.
P. 358. l. 10. for s. 11. r. s. 10.
P. 374. l. 48. for s. 16, 27. r. s. 16, 17.
P. 450. l. 24. for *can no*, r. can be no.
P. 485. l. 10. for *tade*, r. take.
P. 487. l. 17. for *of king*, r. of the king.
P. 489. l. 21. for *other*, r. their.
P. 496. l. 17. for *in an river*, r. in any river.
P. 497. l. 32. for *can*, r. shall.
P. 539. l. 20. for *by plaintiff*, r. by the plaintiff.
P. 560. l. 29. for *in*, r. to.
P. 566. l. 20. for *and*, r. an.

VOL. II.

P. 20. l. 1. for *must first*, r. must be first.
P. 40. l. 26. for *no textend*, r. not extend.
P. 65. in the margin, blot out the words *The value.*
P. 69. l. 35. for *ages if* 21, r. ages of 21.
P. 117. l. 27. for *he*, r. be.
P. 124. l. 16. for *ar*, r. or.
P. 219. l. 8. for *the*, r. he.
P. 250. l. 32. for *an*, r. and.
P. 261. l. 18. for *whither*, r. whether.
P. 301. l. 26. for *townwips*, r. townships.

If there be more *errata* occurring in pages subsequent to these here numbred, as also in the *introduction*, which the author's distance hath rendred impossible for him to point out, the reader is prayed to correct them according to his candour.

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